Quæstio Quodlibetica,

OR A

DISCOURSE,

Whether it may bee Lawfull to take USE FOR MONEY.

Q. E. 15. 33

Johan. Sarisburiensis Epist. 198.

BIBL. CANT. ACAD.

In omni arduâ dubietate censeo faciendum; Ut primo omnium quæramus & sequamur quid super hoc lex divina præscripsit, quæ si nihil certum exprimit recurratur ad Canones & exempla Sanctorum, ubi si nihil certum occurrit tandem exploventur ingenia & consilia sapientum in timore Domini.

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To the Reader.

ASſoon as I had underſtanding in the affaires of this World, I became ſenſible how grievous it was to lie under the heavy diſeaſe of paying Intereſt, Conſideration, or Uſe, (term it how you will) for mony: And finding it generally condemned by thoſe whoſe Judgements and learning I did moſt eſteem, I began to queſtion with my ſelf whether the ſinne were not of that nature that I my ſelf in paying did concur in the ſame offence with the taker, according to that [a] of St *Paul*, in the vulgar latine, *qui talia agunt digni ſunt morte, non ſolum*

[a] Rom. 1. 32.

lum qui faciunt sed etiam qui consentiunt facientibus. Which doubt I found after propounded by *Aquinas* 2^a $2^æ$ *q.* 78. *a.* 4. but neither so resolved by him, or his learned Commentator *Cajetan*, as that I received satisfaction in the point. Upon which occasion I began to search farther, and as for the Scripture I confess the prohibitions in it seemed to me to have much of the Laws framed for no other than the Commonwealth of the *Jewes*; And to bee of the same nature the [b] *Jubile*, [c] The Cities for Refuge, [d] The Release to bee made every seventh year were: for it is no way probable God who commanded them neither [e] to vex, nor oppress a stranger (which it is apparent was of such an one to them as they were to the *Egyptians*) would have permitted the free exercise of Use towards

[b] Levit. 25. 8.
[c] Numb. 35. 11. Deut. 19. 3.
[d] Deut. 15. 1, 2.
[e] Exod. 22. 21. 23. 9.

towards, him could it not have been without either oppreſſion or vexing. And prohibited the *Jewes* who (either in reſpect of their often releaſes and Jubilees) could not give the aſſurances might be required in ſuch contracts, or for ſome other reaſons alone known to the Divine wiſedome. As for the other places in the *Pſalmes*, *Ezekiel*, &c. they ever ſeemed to me no more prohibitions, but were to bee referred to the firſt limitations of it. Beſides, what was me thought very conſiderable, no one Writer I met with condemned the *taking* increaſe upon lone of money if offered with willingneſs, and not contracted for be the party never ſo poor that payed it, yet I obſerved that to be againſt *Levit.* 25.36. as all oppreſſion in buying and ſelling. *verſe* 14.

Touch-

Touching the practice of the Primitive Christians there is nothing more plain than that it was not onely common amongst them, but allowed by lawes, for proof of which there needs no more than the Title DE USURIS found in both the Codex of *Theodosius* and *Justinian*, and that in so high a manner as the Emperour *Constantine* at the very time the Councill of *Nice* sate, seemes to have moderated the excess [f], yet so as hee that lent two bushels was to receive a third *usurâ nomine, quæ lex ad solas pertinet fruges: Nam pro pecuniâ ultrà singulas* Centesimas *creditor vetatur accipere.* I know it is not without question what is the meaning of *Centesima*, *Acursius* saies it was as much as the principall in a year. [g] Est *Centesima quæ sorti in anno æquiparatur.* And elsewhere gives

[f] *De usuris leg. 1. Cod. Theod. l. 2.*

[g] *Glos. ad Novel 2. c. 4. ad verbum* Centesima.

gives this example. [h] *Sors est duodecem usura fit in anno quatuor, sed etsi octo tunc est besis, si equiparatur sorti tunc est centesima.* And so understands it he that made the Gloss upon Gratian. [i] *Centesima dicitur usura quæ sorti æquiparatur in anno.* So that by *Constantines* alowance no man was to receive of fruits above a third, but for mony by the year the whole summe, which was intollerable. Others are of opinion that the Roman manner of paying for the lone of mony beeing by the month, which *Horace* [k] shews

Hæc ubi locutus fœnerator Alphius,
Jam jam futurus Rusticus,
Omnem relegit Idibus pecuniam;
Quærit Kalendis ponere.

And of a Debtor *to pay use,*

—[l] *Tristes misero venêre Kalendæ*

[h] *Gloss. in Cod. de usuris Leg. 26. ad verb.* tertiam partem, *& ad Leg. 28 in principio.*

[i] *Dist. 47. c. 2. verb.* Centesima.

[k] *Epist. 2. in fine.*

[l] *Satyr. 3. lib. 3.*

[m] *Budæus de asse. l. 1.*

They therefore [m] think no man should pay more than the hundreth part of the principall by the month, called therefore *Centesima*, which was 12. *per Cent.* in the year, a large increase enough to ruine any borrower. But be it which it will it cleerly shews as [n] the Emperour *Valentinian* and *Theodosius* say, Vsury or increase for mony was *iure permissam*.

[n] *De usuris Cod. Theod. Leg. 2.*

Neither the Lay alone, but Bishops themselves (not so carefull of their pastorall function as was fit) did [o] *per alienas provincias oberrantes, negotiationis quæstuosa mundinas aucupari, esurientibus in ecclesia fratribus non subvenire, habere argentum largiter velle, fundos insidiosis fraudibus rapere, usuris multiplicantibus fœnus augere*, so that not content with what the law allowed they did increase their stock by use upon use, which how uncon-

[o] Cyprian *de lapsis Annotat. Pamel. 23. cap. 4.*

unconſcionable it might be, and how performed, I will not here diſpute, he that would underſtand how it paſt may read *Acurſius* his Gloſs *ad Leg.* 28. *Cod. Uſuris.*

Theſe exorbitances in the Clergy procured the 17 *Canon* in the Council of P *Nice*, which yet reached none but thoſe that were *ἐν τῷ κανόνι*, *within the rule of the church*, And is undoubtedly there ſet down not as a thing in its own nature bad and forbid *jure divino*, but as we ſay *jure poſitivo* upon the Churches command. For Firſt it did not extend to the Lay, which had it been a ſin in it ſelf, could not have been exempted out of the command. Secondly, at the ſame time the Emperor, ſo renowned to all poſterity for piety and equity in making Lawes, eſtabliſht the thing it ſelf by an Edict, as did divers godly princes who

P *Conc. general. edit. Rome. 1608. p. 23*

who succeded. Thirdly, it only provides for the future, *μετὰ τὸν ὅρον τοῦτον τόκους λαμβάνων, he that should after that time take usury*, not with any reference to the past, which had been most inconsiderately omitted had the thing been in its own nature bad. ¶ As the Heathens observed, Lawes looked not at offences past if the thing were not in its own nature faulty. So when it provides only for the future, without any censure of the past, there is a great probabilitie it was tolerable before. Fourthly, the other particulars provided for with the like severity, are cleerly *juris positivi*, as that none should use any manuall occupation, for so I. interpret *μεταχειρίσεως ἔργον* there. Which how ever it may be very indecently exercised in any of the Clergy, yet certainly hath no other ground for

¶ Neque in ulla *Lege* præteritum tempus reprehenditur nisi ejus rei quæ sua sponte scelerata ac nefaria est, ut etiam si lex non esset magnopere vitanda foret. *Cicero lib. 3. in Verrem. n. 76. p. 75. edit. Rob. Stephani. 1339.*

for beeing unlawfull than the command of the church, for St. *Paul* doubtleſs did it *Act.* 5. 18. 3. 1 *Cor.* 4. 12. *&c.* Laſtly, the offence ſeemes to be much in the quantity, for they exacted not leſs than ἡμιολίαν, that is, the whole and half.

Conformable to this decree of ſo famous a Councill, divers provinciall ones held at [r] *Carthage*, *Arles* and elcewheredid prohibit uſury, but ever with the reſtriction to the Clergy only; indeed the Councill of *Carthage* being put in mind by one that in his parts it was condemned in Church-men, *Gratus* the Biſhop of that Sea replies, *quod in laicis reprehenditur, id multo magis in clericis oportet prædamnari*, which plainly ſhews it not to be condemned as in it own nature a ſinne, for then the Lay as well as the Prieſt had been.

[r] *Conc. Carthag. 1. cap. 13. Arelaten. 1 c. 12. Arel. 11. c. 14.*

been in all times culpable, but as of that which however in some it might be tolerable, yet was not fitting for them to exercise. And truly the excesses then taken did so much pass all proportion of Charity, as it well deserved reprehension, and cause the fathers speak with more earnestness against it than other sinns to which men were by nature less addicted than that of Covetousness. And for proof of it, there needs no other testimony than that of *Justinian*, whose care was *veterem duram et gravissimam* usurarum *molem ad mediocritatem ducere, &c.* and doth therefore establish what should bee taken; too long to be here inserted; he that would know more particularly may have recourse to [f] the law it self. It sufficeth me, that the Emperor having there proportioned what

[f] *De usuris Leg. 26. cod. Just.*

what people of ſeverall conditions ſhould take, he concludes, *Cateros autem omnes homines dimidiam tantummodo Centeſimæ* uſurarum *nomine poſſe ſtipulari et eam quantitatem* uſurarum *etiam in aliis omnibus caſibus nullo modo ampliari in quibus citra ſtipulationem* uſuræ *exigi ſolent*; what *dimidium Centeſimæ* was I muſt refer you to that I have ſaid before, though *Acurſius* explaines it to bee half the principall, by this verſe, *quærere ſemiſſes poſſunt communiter omnes*. It ſeems by *Novel.* 121. 138. and other Laws, Uſe in thoſe times, however thus moderated by the Emperor (who likewiſe took away [t] Uſe upon uſe) was very high.

[t] *Ibid. Leg.* 28.

If any ſhall queſtion how theſe Laws were cenſured by the holy Fathers of thoſe times, I confeſs my ſelf to have read nothing in particular

cular of those concern *Usury*, yet in generall [u] *Eusebius* observes *Constantine* reduced old Laws to more equity, and indeed so we find him to have [x] done, even those did pertain to debts, which are of near relation. And of *Justinian* we find this testimony in the sixth generall Councill, [y] ὑπὲρ πάντας ζηλωτὴς τῆς ἀληθείας καὶ ἀποστολικῆς πίστεως ὁ ἐν εὐσεβεῖ τῇ μνήμῃ Ἰουστινιανὸς ὁ βασιλεύς, οὗτινος ἡ ὀρθότης τῆς πίστεως ἰσόπτον ὑπὲρ τῆς εἰλικρινοῦς ὁμολογίας τῷ θεῷ ἠρέσε τοσαῦτον τὴν χριστιανικωτάτην πολιτείαν ὕψωσε, καὶ μέχρι τὸ νῦν ἀπὸ πάντων τῶν ἐθνῶν ἡ αὐτοῦ θεοσεβὴς μνήμη προσκυνήσεως ἀξιοῦται, οὗτινος ἡ ὀρθότης τῆς πίστεως διὰ τῶν σεβασμίων αὐτοῦ ἡδίκτων ἐν ὅλῳ τῷ κόσμῳ διακεθεῖσα ἐπαινεῖται, Which I translate thus; Justinian *a King of happy memory, above all things jealous of the true and Apostolique Faith, the truth of whose belief as much as it did please God by his*

[u] *De vita Constantini. l.1.c. 26.*

[x] *De exactionibus Leg.3. lib. 11. Cod. Theod.*

[y] *Concil. general. p. 45. b.tom. 3. edit. Rom.1612 Act. 4. Sext. Synod.*

his sincere confession, so much did he raise the most Christian policy; the Godly memory of whose devotion is to this day famous, and the truth of his Faith disperst throughout all the world by his Imperiall Edicts is praised. And somewhat after [z] τελευταίου μὲν ὅμως δὲ πάντων ἐξοχωτέρου τοῦ μεγάλου ἐκείνου Ἰουστινιανοῦ ὅπως ὡς ἡ ἀρετὴ ὅπω καὶ ἡ εὐσέβεια εἰς κρείτονα τάξιν ἀνεκαίνεσε τὰ πάντα. That is, *The great* Justinian, *the last, but most worthy of all, whose virtue and godliness reduced all things to a better order.* How can we then imagine Princes so pious, so carefull to correct all they found amiss, should permit what was so full of sin as some now take it to be?

[z] *Ibid. p. 58. Eprope finem Actionis 4.*

And thus for ought I know stands it amongst the Eastern Christians to this day, unless the *Mahumetan* have made in some parts an alteration. But in

in *Europe* after the year 800, that *Charles* the great divided the Empire, it received some change: For in his Capitulars we find a clear determination that it ought not to be; [a] *Usuram non solum clerici sed nec laici exigere debent*: Which is the first prohibition I have at all met layd upon the Lay. The Councill of *Nice*, and the [b] Canons attributed to the Apostles, did condemn it in the Clergy, and so likewise did some particular Synods. And that of *Carthage* did not approve it in them; and *Leo* the first, who went fartheſt, did grieve [c] *condolere* the exerciſe of it did *cadere in Laicos qui Christianos se dici cupiunt*, intimating it had been a greater perfection of Charity, had they abſtained from it; but none extended to a command, or to determine it a thing they ought not to do, before this Decree

[a] *Carol. Magn. & Ludovic. pij capit. Lib. 5. cap. 36. lib. 1. c. 5. 38. 130. &c.*

[b] *Can. Apoſt. cap. 44. at poſt Gratian. cap. 43.*

[c] *Leo. Epiſt. 1. cap. 3. p. 5.*

Decree of the Emperor; which no doubt wanted not Pens to defend it; for about two hundred years after, certain learned men collecting out of Councils and Fathers, such Rules as were most apt for the Government of the Church, and direction of a Christian, called therefore Canonists, as those who were the beginners of the Canon Law, such were *Burchardus* Bishop of *Wormes*, *Ivo* of *Chartres*, and *Gratian* a Benedictine Monk, who writ the last of them, yet began his Work 1151 [d], and finished it ten yeares after; neither of them omitted sundry [e] Chapters in condemnation of *Usury*, and were therein followed by Canonists, Casuists, and Schoolmen, insomuch as there is hardly any collection of the [f] Canon Law since, without one title *de usuris*, it turning infinitely to the advantage

[d] *Hist. Bologn. da Ghirardacci lib.* 3.
[e] *Burch. lib.* 2. *cap.* 129. *Ivo. par.* 6. *cap.* 196. *& par.* 13. *in principio Gratian. Dist.* 47. *caus.* 14. *q.* 3.
[f] *Decretal. lib.* 5. *tit.* 19. *in sexto lib.* 5. *tit.* 5. *Clement. lib.* 5. *tit.* 5. *&c.*

vantage of the *Eccleſiaſtique*, who by that was made judge of allmoſt all Agreements between man and man, as who ſhall read the title in the Canon Law, and what the Doctors have writ of *Uſury*, reſtitution upon it, and participation with the *Uſurer*, *&c.* may plainly diſcern. And not content with what hath paſt *in foro animæ*, in private, they have gone ſo far, as a [g] Temporall Judge, being ſometimes ready to give ſentence upon a Contract, hath been ſtopt by the Eccleſiaſtique, on a pretence the Bargain vvas Uſurious. Yet the neceſſity of humane commerce hath cauſed divers, ſo great enemies to the name of *Uſe*, with their * *Mountains of piety*, their diſtinctions of *lucrum ceſſans*, and *damnum emergens*, to palliate ſo the thing it ſelf, as to call that no Uſury, which hath the ſame

[g] *Hieron de Ceval. de cognitione per viam violentiæ par. 2. q. 96.*

* *A Mountain of Piety*, is a ſtock of Money raiſed by the Cha-

ſame effect, at leaſt to my underſtanding.

rity of good people, who obſerving the poor ruined by the uſury of *Jewes*, did voluntarily contribute good ſtore of treaſure, to be preſerved and lent unto them, whereby they upon ſecurity might have money at a low rate to relieve their wants, which becauſe the maſs is great, and the thing pious and charitable in it ſelf, is called a Mountain of Piety. But in reſpect the Officers and other charges incident unto it cannot be had without ſome emolument, therfore the borrower pays ſomewhat by the Moneth for the lone of that he receives. *Cajet. opuſc. de monte pietat. cap.* 1.

There is another ſort, which is, when a Prince or State hath need of a good quantity of money, and doth for his ſupply, either impoſe a lone upon particular men, or voluntarily receive a good ſumme from them, and for their ſecurity aſſignes of his revenue 5. 6. 7. or 8. *per cent.* This differs from Uſe-money with us, in that the lender cannot at his will call it in, or make uſe of the money it ſelf, otherwiſe than by transferring his right in the Bank to another, onely the Prince at his pleaſure may, by paying all in, diſſolve the Bank. *Antonin. par.* 2. *tit.* 1. *cap.* 11. *in principio.* And there wants not learned men which hold both theſe wayes of receving increaſe to bee Uſurious, and likewiſe that defend the contrary, that neither of them is, See *Matheo Villani lib.* 3. *cap.* 106.

After

After the year 1200 much of the Eccleſiaſtique power, eſpecially what concerned Hereſie, was delegated by the Pope to certain *Inquiſitors* (called ſince the Court of Inquiſition) [h] whom *Alexander* the fourth, about the year 1255 did expreſly charge not to meddle with any Queſtion of *Uſury*, though there wanted not ſome, who in that Age affirmed, *Uſura non foſſe peccato mortale*, as appeares by [i] Hiſtory, and that reſolution of *Clement* the fifth in the Councill of *Vienna*, 1311. *Si quis in illum errorem inciderit ut pertinaciter affirmare præſumat*, exercere uſuras non eſſe peccatum, *Decernimus eum velut hæreticum puniendum*. Upon which the Inquiſitors grew very buſie in many parts. At *Florence* in the year 1345, [k] upon a great diſorder that then fell out, they were forced by Laws con-

[h] *In ſexto de Uſuris c. 8. 9. de quæſtionibus.*

[i] *In Clement. de uſuris. cap. Unico. & Giovan. Villani. lib. 12. c. 57.*

[k] *Giovan. Villani. ib.*

conformable to those of *Perugia*, *Spain*, &c. to regulate their power, though in [l] *Arragon* by a Bul of *Leo* the tenth it seems they now proceed in such causes. In *Venice*, that wise State would never admit the Inquisition [m] *Che si trattino causa di usura di qual si voglia sorte*, to meddle with any kind of *Usury*, nor the Trade of any Artisan, *&c.*

Touching the Church of *England*, farther than that the Councill of *Nice* was received both by the [n] *Britons* and [o] *Saxons* even at the very first, I know no particular prohibition of *Usury*, if we omit that imperfect clause [p] in the Council of *Calcuith*, about 787, till *Edward* the Confessor, who having lived long in *France*, and seasoned with the principles of that Kingdome [q] did,

First, banish all Usurers out of his Kingdom.

Secondly,

[l] *Ludovi. a Paramo. de Origine Inquisit. lib. 2. c. n. 36.*

[m] *Tattato d' Inquisitione. c. 23. 30, 31.*

[n] *Epist. Constant. apud Socr. lib. 1. c. 6. & apud Theod. lib. 1. Hist. cap. 10.*

[o] *Beda l. lib. 4. c. 17. p. c. 17. p. 299. concil. Spelm.*

[q] *cap. 37. Leg. Ed. p. 151.*

Secondly, if any after that prohibition ſhould be found to exerciſe it, he then confiſcated all he had.

Thirdly, he bard them of the protection the Law afforded, and gives this reaſon, that having lived in the *French* Court, he had learnt, *quod uſura radix omnium malorum eſſet.* But as a [r] learned Gentleman wiſely obſerves, *Too ſevere Laws are never duly executed*; ſo happned it with this, which certainly was not all put in practice in *England*, for in the year 1126 in [r] a Councill held at *Weſtminſter*, by Cardinall *de Crema* the Popes Legate, and the Clergy of *England*, we find it only prohibitory to thoſe of the Church; *Uſuram & turpe lucrum clericis omnimodis prohibemus, qui vero ſuper crimine tali confeſſus fuerit aut convictus, à proprio gradu dejiciatur.* And again in another held

[r] *Cook Inſtit. 3. c. 74. p. 163.*

[r] *Sim. Dunelm. An. 1126. Col. 254, 19. at Contuat Florent. Wigorn. An° 1125. p. 501.*

held at the same place by [t] *Albericus* Bishop of *Hostia* the Popes Legat 1138, thus, *Fœneratores clericos & turpia lucra sectantes, & publica secularium negotia procurantes, ab officio Ecclesiastico nihilominus removendos censemus*: Which is indeed no more than a renewing the *Nicene* Canon, of which before. After this I doe not remember any one made directly against it in *England*. Neither hath *Lynwood* any title of it, though there be so many in the Common Law, nor at all that I know doth he touch upon it, unlesse in one [u] place, and that very lightly, which shewes clearly it was not much prosecuted here.

By these steps that which at the first was exercised by Bishops and others, afterwards forbid the Clergy, as what might [x] intangle them in the affairs of this world, and

[t] *Apud Richard. Hagulstad. p. 327. 66.*

[u] *De pignoribus c. unico verbo* Usura, *fol. 81. a.*

[x] 2 Tim. 2. 4.

y 1 Tim. 3. 8. and shew minds y too greedy of filthy lucre, allowed by so many Imperial Edicts of the most pious Emperors, first became disliked in the Lay, after that prohibited, and then they proceeded so far, as to determine, to affirm it no sin, was Hereticall.

Upon the whole matter I could not conclude, either by expres words, or necessary inference out of Scripture, or the practice of the Primitive Church, either giving, or taking use for mony lent, to be in its own nature amongst Christians sinfull, so as no other circumstance made it so, as either the exacting the height the Law permitted, or upon the Borrowers poverty, not accepting what he is willing and able to pay, but with rigour forcing from him the uttermost penalty, or using some other way against Charity, not

not so fit for me to explicate; In short, I saw no reason not to submit to that of *Alstedius*, [z] *Usura non est intrinsicè sive suo genere mala, sed est res indifferens*; nor to deny that of [a] *Calvin*, *Nullo testimonio Scriptura mihi constat usuras omnino damnatas esse*.

[z] *Cas. Conscien. c. 20. n. 29. p. 418.*

[a] *Epist. 383.*

Yet I doe not take upon me to determine it to be absolutely lawfull, I leave that to some Learned Divine, only I have here historically related what I met with in the inquiry. I know many of conscience and Learning are of a contrary opinion, and I take this to be of that nature [b] S *Augustine* in one place held Purgatory, *utrum ita sit, quæri potest et aut inveniri aut latere*, that every man ought to satisfy himself, and do accordingly. Men of great sincerity and judgment may differ in Theologicall tenets. Cardinall *Cajetan*, of that in-

[b] *Enchirid. c. 69. p. 3.*

tegrity *Chamier* hath left this testimony of him, [c] *vir meo judicio quanvis Papista tamen candidus, plurimumq; distans ab ea pertinacia quam in reliquis deplorare cogimur*, is fully of opinion the paying money for loan to those Banks are called Mountaines of Piety is [d] unlawfull and usurious. Cardinall *Tollet*, in whose writings to use *Casaubons* words, [e] *cum excellente rerum philosophicarum et theologicarum notitia par certat modestia*, is cleerly contrary and against him, holding them very lawfull. In these disputes I cannot but think of that of [f] *Aqu. Quando quaestio qua quæritur de aliquo actu utrum sit peccatum mortale vel non, nisi ad hoc habeatur auctoritas expressa scripturæ sacræ, aut canonis, seu determinationis ecclesiæ, vel evidens ratio, non nisi periculosissimè determinatur*; and indeed, if he mean by the determination of the Church

[c] *Cham. de canone. to* 1. *lib.* 12. *c.* 1. *n.* 34. *p.* 424.

[d] *Cajet. opuscul. to.* 2 *de monte pietat. cap.* 6. 9.

[e] *Casaub. ad Fron tonem Ducæum. Epist. p.* 38.

[f] *Quæst. quodlibet. ut citatur apud Antonin. par.* 2. *c* 11. *Sect.* 28.

Church the four, nay that of faith that was resolved in the six first generall Councills, I know nothing to oppose against it; but of this too much.

Whilst I was thus in search, this peece I now give thee, was written almost thirty yeares since by a very Learned Gentleman for satisfaction of a person of worth, and relation unto him, fell into my hands, from whence some friends importunate for copies of it, I fearing the thing it self might receive injury by ill transcribers (as those of som s famous writers have done) adventured the putting it to the press, not knowing how the Auctor may interpret this my bold attempt in doing it without his command. The Reader therefore cannot expect it should come out so perfect as it might have done, had it past his last eye. Yet if thou find any just cause of excep-

s *S. Aug. Retract. 2 cap. 13.*

tions, let them be known, before the gravel ſtone or ſome infirmity make the Writer unable to give thee and the world further ſatisfaction. However, ſuch as I received it, I give it unto thee, and if thou beeſt a Lender and it ſhall not ſatisfie thee in the receiving profit for loan of mony, I can aſſure thee it hath me fully in the paying of it. farewell.

East-Peckham
Oct. 9. 1652.

ROGER TWISDEN.

THE PREFACE

IF *Exceptions be taken either to the Argument or Author of these notes,* The *Answer must be*, This question of Vsury concerns no Article of Faith; *But is a point of Morality, and case of Conscience, and in that regard it admits of a disputation without Scandall: the rather, for that the Church of* England *hath not Defined or Described* Vsury. *The Divines of the reformed Churches are divided in this Controversie; The grea-*

teſt part of them oppoſe or miſ-like the rigid aſſertion of ſuch as condemn All Contracts for gain by lending; *Namely*, Biſhop Babington, *Mr.* Perkins, *Dr.* Willet, *Dr.* Mayer, *Mr.* Brinſley, *and others here at home; and abroad*, Calvin, Martyr, Bucer, Bullinger, Danæus, Hemingius, Zanchius, Vrſinus, Bucanus, Junius, Polanus, Molineus, Scultetus, Alſtedius, Ameſius, Grotius, Salmaſius.

The Author, though he be neither Divine by calling, nor by profeſſion a Scholar, yet as he is a rationall man he may, and as he is a Chriſtian he ought

ought, for the direction of his own practice, to examine what may be done with a safe conscience, and what not. The Civilians *and* Canonists *frequently dispute of the nature of* Vsury, *he knowes not but that any other Laique may doe the like. The Argument was first undertaken for the satisfaction of the tenderness of the conscience of others, and not to justifie any practice of the Authors, who hath alwaies given, but not taken* Vsury. *This point of* Vsury, *as it is at this day controverted, is a meer popish question; first broached by the* Schoolemen *and* Canonists,

nists, *no antient Father or writer that I know of ever defined or disputed it. Since the Reformaton* Melanchon *and* Chemnitius *are the only noted men abroad, and here at home Dr.* Downam *now Bishop of* London-derry *in* Ireland, *Dr.* Fenton, *and learned Dr.* Andrewes *late Bishop of* Winchester. *I have made choice of Dr* Fentons *Treatise to examine, because it is the latest, and I find little of any moment but is in him. I desire his book may be first throughly read, for otherwise, what I write will not so easily be understood. To give some brief accompt to*

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the Reader of the ſubſtance of the ſcattered arguments in this Tractate, he muſt know; That my ſcope and intention is to ſhew that Vſury *is no where in Scripture forbidden to Chriſtians: but that it is as lawfull as any other contract or bargain, unleſs the lawes of the Land do prohibit or moderate it as a point of ſtate or policy. And that no State or Commonwealth can or ever did ſtand without it, or that which in contracts is equivalent to it, ſince the valuation of the uſe of money is the foundation and rule which govern the valuation of all other ſorts of bargains. I further maintain,*

that

that Vſury *was never forbidden to the* Iewes; *only by (reaſon that by a more ſpeciall appointment of God they dwelt in a land in the midſt of many ſtrangers)* Moſes *made a politique Iudiciall law, that the Iewes ſhould take* Vſury *of thoſe ſtrangers, and not of their poor brothers: not much unlike as if the King ſhould ordain in* London, *That Citiſens ſhould take* Vſury *of men of* Midleſex, *and not of poor tradeſmen of the City. More particularly, I undertake to manifeſt, that the Definitions of* Vſury *(wherein Dr.* Down. *and Dr.* Fenton *mainly differ between*

between themſe ves) are neither warrantable by the rules of art, nor juſtifiable by any proof or ground in Scripture, or by any teſtimony of antiquity either in Councils or Fathers. And that the lawes given by God about Vſury *are ſuch as by the Coherence of the Texts, and the Conference of other places, do ſhew that thoſe lawes did only intend a prohibition of taking* Vſury *of ſuch as borrowed in caſe of extreme neceſſity, and were ſo poor that they were in Charity to be relieved. And yet thoſe lawes which did in ſuch caſe only prohibit* Vſury *to the* Iewes, *were not*

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moral or perpetual, but Judiciall and temporary, and no way bind us, but we are left to the lawes and customes of the Kingdome to guide us in our Contracts so long as they bee not contrary to the rules of Charity. I shew that all the properties of Letting *do agree to money. And that* Vsury *in it self is neither* unnaturall, ungodly, unjust, *or* uncharitable. *Lastly, I do shew that Dr.* Downam, *Dr.* Fenton, *and all others that do most condemn* Vsury, *are forced to confess at last that* Vsury *may be lawfull; they all allow the taking of Interest, Mortgages,*

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Annuities and Leaſes for yeares, all which by their own expoſitions and confeſſions are of the ſame nature with Vſury, *and doe only differ in the manner of the ſecurity or contract: after they have eagerly diſputed that all Contracts for gain by lending are* Vſurious, *at the end they quietly conclude, that the Contracts are not* Vſury, *but onely the ſecret intention of the heart makes it to be* Vſury *or not* Vſury.

Thus in few words they overthrow at laſt the foundation of their own doctrine, and play faſt and looſe by a multi-

tude

tude of their irresolute distinctions, so that either their Conclusion must be that Vsury *is lawfull, or els they can conclude nothing at all.*

If I wrong either Dr. Fenton, *or the truth, I desire friendly to be shewed my error. I do not follow him here* Line by Line, *for so I might tire my self, and vex others with unnecessary tautologies: I have onely endeavoured to extract the* quintessence *of his reasons, and to apply my self to the examination of them. His Reasons not his Rhetorique I except against, whether* Justly or Vnjustly *let others judge*

to

to whose Censure I submit these Papers.

I would fain know of the Ministers of the Gospell who do often reckon up in the pulpit Vsury *as one of the Crying sins, what warrant they have in the Gospell for such boldness: we find severall sinnes numbred up by our Saviour and the Apostles, but* Vsury *never so much as named for a sin in the whole New Testament. St.* Paul *in the fift to the* Galathians, *doth with one breath reckon up together seventeen sins which he reproves, & yet* Vsury *is none of them. But many preachers cannot*

not Reckon up ſeven deadly ſins except they make Vſury *one of them.*

R. F.

Errata.

Pag. 3. l. 14. for different *lege* for *a* different. pag. 100. l. 26. *ſute lege ſutes* in law. p. 123. l. 22. for *Exod.* 0. 13. *lege Exod.* 30. 13. p. 131. l. 22. be ſold, *lege* muſt be *juſt* ſold.

AN EXAMINATION OF Dr. *FENTONS* Treatise of *USURY.*

Touching the Definition of USURY.

Let pass his Chapter of names of *Usury*, because he Confesseth that by them he hath proved *litle or nothing at all*, Page 12. The main point is the Definition, which he saith must not bee

omitted, or ſlightly paſſed over, becauſe it is a great *and neceſſary queſtion to reſolve the underſtanding what that Uſury* is, whereof we diſpute, *pag.* 13. And therefore hee doth intitle his firſt book wholy about the Definition of *Uſury*: although when he comes unto the point, he doth nothing leſs than define it; As may thus appear. *Actuall Uſury* (ſaith he) *pag.* 15. is of divers *diverſly deſcribed, a variety tedious to relate.* Firſt, in ſtead of all unlawfull Uſury, he ſpeakes of a deſcription of part only, to wit of *actuall uſury*; whereas he ſhould firſt define, and then divide: but inverting the Rule of method, he ſuffers *mentall uſury* (which hee ſaith is a ſin) to eſcape out of his deſcription.

Neither doth hee ſo much as deſcribe *actuall uſury*, onely hee tells

tells us of diverſity of deſcriptions of others, but never lets us know which he approves. Yet at laſt hee *contracts* the pith in three words, but reſolves not how wee ſhould place them; ſo leaves us to a thus, or thus, or thus. Firſt, hee puts *Lucre* in the place of the *Genus*, and *Covenant* in the room of a difference. Secondly, he makes *Covenant* the *Genus*, and *Lending* the difference; and laſtly he puts *Lending* for a *Genus*, and *Lucre* for difference. Thus by turning the *Genus* into the difference, and the difference into the *Genus*, he leaves us uncertain of his deſcription, yet concludes that within the *compaſs of three words we may finde Vſury*; but who knowes not that three words diverſly placed breed many times different, and ſome times contrary ſen-

ses. Yet this is all the definition you are like to find in him. And thus in few lines he passeth over *sleightly that necessary question* which should resolve our understanding *what Usury is*.

But let us draw a little closer, and examine the pith of these three descriptions cited by Dr. *Fenton*, and contracted in three words.

Pactum ex mutuo Lucrum.

Usury is { *Lucre for Lone upon Covenant*, or *The Covenant of Lucre for lending*, or *Lending upon Covenant for Lucre.*

1. Whereas he saith *Usury* is *Lucre*, he seems to make *Lucre* or Gain to be the *Genus* of *Usury*. This undoubtedly is a false *Genus*; For certainly *Usury* is a sin of Commission, and therefore an

action

action or *operation*; so that *Lucre*, or gain which is onely a *passion* or *product* of Lending, cannot be the *Genus* of it.

2 He maketh *Covenant* to be the *Genus*: Let me ask him but this question; A Father to stir up onely, and trie the industry of his Son, doth lend him an hundred pound with a *peiraſtical* covenant for *Gain*, not intending with himself to take any interest at all of his Son; Doth any man take this to bee *Vsury* in the Father, who never meant to take the least encreaſe from his Son? Surely then the bare Covenant cannot be the ſin of *Vsury* in this caſe.

3 He ſaith, *Vsury is lending upon Covenant for Lucre*. In this deſcription, as alſo in the two former, I find a manifeſt contradiction of his own Principles and Grounds. *To lend for gain is no*

lending at all; *for Lending* (saith he, *pag.* 16.) *in its own proper nature is free*; *Letting is for hire or gain.* So that by this his Doctrine, *Lending* for gain is no lending at all, but letting or hiring out. Therfore if Dr. *Fenton* had been true to his own principles, he should have defined *Usury* to have been *Letting upon Covenant for Lucre*; or in brief, Letting or hiring of Money. But both Dr. *Fenton*, and all other *Antidanists* cannot endure to have *Usury* called Letting or hiring of money.

Moreover, I find in these three descriptions, that he imagineth the Gain or Lucre is for the *bare act of Lending*; In which hee is much mistaken: It is not for the lending, but for the *using* of the thing lent that men give *Usury*: and answerable to the time for which Money is let, the increase

or

or *Usury* is more or less, although the simple act of Lending be alike in both. The ordinary word *Usury* (which Dr. *Fenton* derives from *usus rei*, the use of the thing) teacheth, even children, that *Usury* is given for the Use of the thing, and not for the bare Lending.

Again, in these his three descriptions the word *Covenant* is perpetually found; without any warrant of Scripture: Yet hee pretends by *deduction* to fetch it out of the Text in *Exod.* 22. 25. *Thou shalt not be as an Usurer unto him, thou shalt not oppress with Usury.* In the Original it is, *Thou shalt not exact*, and, *thou shalt not impose Usury.* From whence Dr. *Fenton* concludes, that there can be no exaction or imposition upon a free person, but by way of *Covenant. pag.* 26. Under favour,

this his inference is false; for exaction may be of things neither covenanted for, nor due. In the construction of our Common Law, and of our vulgar phrase, *Extortion* and *Exaction* are thus distinguished, *Extortion* is a wrong in taking more than is due, *Exaction* is the taking of that which is *not due at all*: Which distinction were false, if that Exaction must be by precedent contract. The poor Jews did ordinarily borrow victuals, money, and other necessaries upon Pawns, as may appear by many Texts. The Lender, who did take the pledge as a caution for his Principall, might detain it from the poor Borower untill hee would allow some gain above the Principal, and by such unjust means *exact* or *impose* an unconscionable increase without any precedent Covenant.

There

There is small reason to imagine, that such indigent people (as are described by *Moses*) who borrowed onely to supply a present want, should have credit sufficient to take up so large a sum for so long a time as might deserve an Obligation or Covenant for the payment of encrease. A man who could not have his Bond taken, might yet have his Garment received for a Pledge; and Pledges were ordinarily given with intention of speedy redemption, because raiment is almost as necessary as food. The borrowing in this kind being of things of so small value (that the use of them for a small season was hardly valuable) might be a great reason of the prohibition of *Usury* by *Moses* in such cases. Neither is a man that lends upon Pawns in the like hazard with

him that takes Bonds, or such securitie.

It is the confession of Dr. *Fenton*, that *When the Law against Vsury was given, there was none that borrowed but only the poor for need, and upon necessity.* Therefore, without better warrant by direct and literal proof from the Scripture, it cannot be evinced that this word (*Covenant*) must necessarily be required in the definition or description of Usury, although Dr. *Fenton* conclude, *it is no Vsury except it be by Covenant*, or by some dumb Contract at the least.

Dr. *Downam* omits this word Covenant in his definition of *Vsury*. I am strongly perswaded by a place in *Nehemiah*, to think that *Vsury* doth not consist in *contracting* for gain. I find in the sixt Chapter, a grievous oppression

sion described; *A great cry of the people against their Brethren the Jews, they were forced to take up Corn for themselves, their sons and daughters, upon mortgage of their lands, vineyards, and houses, they sold their children for bond-slaves.* These were men oppresst by Contracts, and were to pay twelve in the hundred, as appeareth by the eleventh verse. And yet for all this, there are such passages and circumstances of the text as move me to think that this Oppression was not properly Usury.

First, *Nehemiah* never calls it *Usury*, but only a *Burthen*; neither the word *Neshee*, nor *Tarbith*, nor *Marbith* is to bee found in this Chapter, and yet these are the only words in the Law to express *Usury*.

Secondly, *Nehemiah* never tels the Nobles and the Rulers, that they

they had broken the Law againſt Uſury. Any man would think, that to rebuke and reclaim men from their ſin, the way had been to have named it in particular, or the Law by which it was prohibited: but *Nehemiah* doth neither of theſe, he only tels them, *it was not good what they did*, and aſkes them *if they ought not to walk in the fear of their God becauſe of the reproach of the heathen their enemies*; not becauſe of a particular Law againſt *Uſury*, but for that the name of God ſhould not be blaſphemed by the heathens, when they ſaw how miſerably the Jews did oppreſs one another.

Thirdly, *Nehemiah* tels the Nobles, *that he and his ſervants might have exacted as well as the other Nobles*: Whereas if this exacting had been *Uſury*, he could not juſtly ſay, that *he might have exacted*, for

for it had been againſt the Law.

Laſtly, *Nehemiah* doth not threaten to puniſh them as he was a Magiſtrate, but entreateth them by his *charitable* example to leave off their exacting that *Burthen*.

So then *Nehemiah* never naming *Uſury*, nor mentioning the Law againſt it, but ſuppoſing the act of the Nobles to be lawfull, but not expedient, doth encline my belief to think, that this Oppreſſion was not properly *Uſury*, although it had a Covenant for gain.

And one reaſon why this was not *Uſury* might be, becauſe the people were not primarily ſuch poor neceſſitated brethren as are deſcribed in the firſt Lawes againſt *Uſury*: For though theſe fell into want, yet at the firſt they had *lands, houſes, vineyards*, and *olive-grounds*, for which they were to pay unto the King a yearly Tribute. Ano-

Another reason that avails with me to perswade that all contracts for gain are not prohited as *usurious*, is the testimony of our Saviour, *Luke* 19.23. who mentions a Bank of *Usury* in the Jewish Commonwealth, out of which a man by delivering in his mony, might at length receive his own with *Usury*. Although our Saviour do neither shew dislike nor approbation of such a Bank, yet for it to bee within any City of the Commonwealth of *Israel*, without the ordinance, or at least allowance of the Prince or Magistrate, is a thing most improbable. And almost as unlikely that the State should tolerate such a Bank if all *Usury* were of it self unlawfull, and also so pernicious to the Commonwealth by the oppression of it as Dr. *Fenton* pretends.

I find many reproofs in the Gospel

ſpel of the falſe gloſſes and interpretations of the Scribes and Phariſees, whereby they perverted the Law in many things; but I find not any rebuke of the Magiſtrates for this of *Vſury*, if it had been ſuch a publique violation of the Law, it could not have been forgotten by our Saviour Chriſt and all his Apoſtles.

But to what purpoſe is it to diſpute about the terms of the deſcription of *Vſury*? or what ſort of Contract it is? when it appears plainly in Dr. *Fenton*, that not onely the Covenant of lending, but alſo (in his opinion) *buying*, *ſelling*, *letting*, *exchanging*, and the reſt, may be all Contracts of *Vſury*. To give an inſtance, theſe are his words, *pag.* 21. *With a hundred pound I purchaſe an annuity of twenty pound* per annum

for

for ten years: This is Bargain and Sale, differing in the manner of the Covenant, yet is it the same thing in truth with Vsury. And so in another place (*pag.* 129.) he saith the like. I must say this is an expres contradiction, to affirm that purchasing is *buying, and another manner of Covenant differing from Lending*, and yet to say *in truth it is the same with Vsury*, which he saith is *Lending*, this is to make buying and lending all one, and to confound all Contracts.

As the term of *Covenant* is not to be found within the Texts against *Vsury*, so in the Fathers of the Church there is no mention of it; they abuse us therefore, who pretend the consent of the Primitive Church for the condemning of all *Contracts* of gain for the use of money. The truth is, the *Canonists* and *School-men* were

were the first broachers of these descriptions of *Vsury* which are now pressed upon us by some few Modern Divines. Antiquity was more modest and observant of the phrase of *Scripture*, which doth deliver the Laws against *Vsury* in such restrained terms as are by a just construction appliable properly to the Rules of Charity and Equity, for the relief of the poor onely.

From the Canon-Lawyers (who are the Popes learned Counsell in the Law) hath Dr. *Fenton* borrowed not only his descriptions, but also his arguments and distinctions at the second or third hand: For he takes all from Dr. *Downam*, Dr. *Downam* from *Melanchon* and *Chemnitius*, and these two fetch it from *Canonists*, *Casuists*, and *School-men*. And although Dr. *Fenton* bee free from the

the sin of *Usury* by borrowing freely his whole Treatise from Dr. *Downam* without paying the interest of one new Argument or Reason: Yet if Dr. *Fenton* did not Contract with Dr. *Downam* for the borrowing of the Treatise, he is little less than a Plagiary, and if we take this word in as large signification as they doe the word *Usury*, it will follow, that though Dr. *Fenton* bee not guilty of paying Usury, yet he hath offended against another Law in *Exod.*21.16. *Deut.*24.7. which is the greater sin; for although the Law of God appoints no punishment for an *Usurer*, yet a *Plagiary* was to be punished by death.

Of Testimonies of Scripture.

I should have proceeded now to examine the properties of *lending*

ding and *letting*, and how they differ; but becauſe I find mention of them in ſeverall places of my Authour, I will reſerve them a while, and firſt handle the texts of *Scripture* that are moſt materiall in this controverſie.

Three texts onely are to bee found in the law of *Moſes* about *Vſury*. In the two firſt the poor is moſt expreſly named, and in the third neceſſarily implied. *Exod.* 22. 25. *If thou lend to my people the poor with thee, thou ſhalt not be as an Vſurer unto him. Thou ſhalt not oppreſs with Vſury.* Levit. 25. 35. *If thy brother bee impoveriſhed or fallen into decay with thee, thou ſhalt relieve him — take thou no Vſury of him or increaſe — thou ſhalt not give him thy money upon Vſury, nor lend him thy victualls for increaſe.* By theſe two texts we have an exact de-

deſcription of the poor, who muſt be one impoveriſhed and fallen into decay, one, whoſe hand (as the text is) is weakened and ſhaketh that hee cannot labour, one, whom thou haſt need to receive and relieve, and one who is forced to borrow victualls for neceſſity. The third text though it doth not expreſly name the poor; yet that it hath reference onely to ſuch is moſt probable. Firſt, becauſe as in the former text in *Levit.* where the poor are deſcribed, and one of their properties mentioned to be borrowing of *Victuall*, ſo in *Deut.* 23.19. where the name of poor is omitted, yet the property of borrowing food is ſet down, which to be the Cuſtome onely of the poor in extreme neceſſity, common experience doth daily teach us. Secondly, the law

law here doth only uſe the word of *biting* or *Neſcher*, which word is alſo only uſed in the firſt text, where the poor is named. Thirdly, if we will allow (as all men do, and as we needs muſt) this law in *Deut.* to be the ſame with that in *Exod.* & *Levit.* then it muſt have the ſame *object* the poor, and the ſame *end*, which is the relief of the ſame poor, for we find no other reaſon or end alleged in Scripture for the prohibition of *Vſury*, but that the *poor brother may live with thee and have ſufficient for his need.* God where he tyes men to lend, he provides & binds them to lend freely. The law is, *if there be among you a poor man of one of thy Brethren, thou ſhalt not harden thy heart, nor ſhut thy hand from thy poor brother, but thou ſhalt open thy hand wide unto him, and ſhalt ſurely lend him*

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sufficient for his need in which hee wanteth. Deut. 15. 7, 8. For the observation of this law God was carefull that this lending should be without *Usury*: Hee makes no law to bind men to lend unto the Rich, and therefore there is no law to restrain taking *Usury* of them: The lending to the poor was to be so free that it must bee in the next degree to giving, and wee finde that to this law that commanded *Lending*, is added in the very next verse, *Thou shalt surely give him, and thy heart shall not be grieved when thou givest unto him.* Likewise in *Levit.* 25. it is said, *thou shalt relieve him*, and then it followes presently *take no Usury of him* Thus the Scripture doth couple the work of *Charity* with the prohibition of *Usury*, to teach, that they are both conversant about one and the same *Object.*

ject. Therefore he that ſhall make the Rich alſo the object of this law in *Deut*. he muſt of neceſſity invent ſome new *End* and *Reaſon* of it more than the Scripture doth afford, and alſo make the lawes themſelves to differ; wheras a true reaſon why the law in *Deut*. is in ſo ſhort termes, may be, for that the law having been twice before more particularly ſet down, *Moſes* doth in *Deut*. onely repeat it in brief and few words, as being ſufficient to call it to their remembrance, now they were ready to enter into the land of promiſe. If wee conſider alſo the unmercifulneſs of the Jewes amongſt themſelves, it was high time to make proviſion for the poor, they would not ſtick it ſeemes to ſtrip a poor man ſtark naked for a debt, as appeares by the law concerning the re-

restitution of pledges before sun set if they were *the covering only* & *rayment for the skin* wherin *a man might sleep*, *Exod.* 22. 26. Besides they would forbear to lend to the poor because they were in danger to lose their debt if they did not recover it before the seventh year. The law is *Deut.* 15. 1. *Every seventh year*, every *creditor that lendeth ought unto his neighbour shall release it*, —— *that which is thine with thy brother thy hand shall release.* This releasing of debts had the same end with the prohibition of *Usury*, the relief of the poore, and although this law of releasing be delivered in the generall termes *of neighbour* & *brother*, yet they must be understood onely of the poor brother as it is most apparent by the exception following in the fourth verse,

which

which ſaith this releaſe muſt be *ſave where there ſhall bee no poor among you*: and in the 11. verſe, after the releaſing of debts, and the lending to the poor enjoyned, the concluſion is, *for the poor ſhall never ceaſe out of the Land, therefore lend to thy Brother, to thy poor, and to thy needy in the Land.* Theſe places do teach us that this word *Brother* is ſometimes in a ſpeciall ſenſe uſed for the *Poor.* This law of releaſing made men afraid to lend, and therfore God warnes them in the ninth verſe, *Beware that there be not a thought in thy wicked (or Belial) heart Saying, the Seaventh year, the year of releaſe is at hand, and thy eyebe evill againſt thy poor Brother, and thou giveſt him nought.*

Now ſince the law of God which prohibiteth *Vſury* onely in three places hath in the two

first expresly named the poor, and described them, and in the third cleerly intimated them, By what Reason, Conscience, and Charity, can any man extend those lawes to all men in general, which the Holy Ghost hath so carefully restrained to the poor? And since the Law first given against *Usury* doth mention oppression of the poor, I wonder *Dr Fenton* would not fetch his definition from the text, & call *Usury* oppressive lending to the poor: but never mentioning oppression of the poor, he calls it a *Covenant of gain for lending*; which is quite beside the text, which seemes only to forbid *Usury* to such as stand in need to be relieved by our Charity.

And for this cause I doe conjecture *Calvin* did say, *that unto him it did not appear by any testi-*

mony

mony of Scripture that all Vſury is altogether condemned, and it is conceived that one reaſon why the law of *Moſes* doth appoint no kind of *Judiciall* puniſhment for *Vſury*, might be, becauſe the ſinne is determinable only by the judgement of a mans own Conſcience and not by any precedent contract for gain.

As for thoſe texts in the *Pſalms*, *Proverbs*, and *Ezekiel*, their general words cannot make any new law, but their rebukes and exhortations relate to the breach or obſervance of the law formerly given by *Moſes*: And even *Ezekiel* who moſt declames againſt *Vſury*, *Eze.* 18. 17. joines it with making the poor *Sorrowfull*, *not giving bread to the hungry*, *and not cloathing the naked.* Nor can theſe texts be any expoſition of the lawes of *Moſes* againſt *Vſu-*

ry, because the lawes themselves are expressed and explaned in more particular significant terms by *Moses* than by *David*, *Solomon*, or *Ezekiel*, who give but a touch.

Of the Names of Usury.

I know the adversaries to all *Usury* do much triumph in their Origination of the Hebrew term for *Usury*; because it is derived from a root that signifies to bite, they conclude it is like the sting of a Serpent, and in that regard to be esteemed as an abominable sin. *Answ*: First wee must remember that *Dr. Fenton* doth confesse that *names have been no definitions*, and therefore are not demonstrative arguments in any question. 2ly, I do acknowledge that the Originall word *Neshec* might well denote some malignant quality in *Usury*, and I conceive

a true reaſon of it might be, for that the firſt kind of borrowing which was in the world, or at the time when the law againſt *Vſury* was given, was in Caſe only of neceſſity, and to aſk an overplus in ſuch Caſes was a ſin that well deſerved the worſt name. We all know that Riches of mony and many other goods were brought into the world by degrees, as arts & trades were multiplied by the induſtrie and wit of man. Stately buildings, rich furniture, gorgeous apparell, and dainty feaſts were not prepared againſt the Creation of Adam; It was a long time before ſo much ſilver was digged up and Coined as would fill mens Coffers that they might ſpare or imploy large ſums by the negotiations and traffique of others; men firſt looked after things

necessary only, and the want of such things taught them to borrow of one another.

Also when the law was given, the *People of God* (saith *D. Fenton p.* 10.) *were travelling in the desert, and afterwards being troubled with wars in the Land of* Canaan, *there was little borrowing of mony, but only by the Poor for the Supply of their want, and of them to take Vsury was more sensible biting, & oppression, in that they borrowed not to lay out for Commodities, but to spend for necessity. Therefore* David *in his troublesome dayes used the word Neshec only for Vsury, as best fitting those times where the poorest were most bitten by this sin.*

In these passages of *Dr. Fenton*, we may note, what manner of borrowing Caused the first name of *Vsury*, which name afterwards for the similitude only of the increase

creaſe might be applied to all other ſorts of borrowing, although they were not of the ſame uncharitable nature. The like obſervation of a good name uſed for a bad thing *Dr. Fenton* produceth in the Latin name of *Vſury*. Uſura (ſaith he) *was originally a a good honeſt word untill Vſury did marre it. For* Uſura *intruth is nothing but* uſus rei, *primitively taken for the uſe of other things as well as money.*

In Concluſion, although the uncharitable gain that was practiſed upon neceſſitated borrowers did juſtly deſerve a befitting name of *biting*, yet a gain that is taken from ſuch as borrow where neceſſity conſtraineth not, is but an *equivocal biteing*, Becauſe properly there can bee no biting but where there is *oppreſſion*, and oppreſſion is

onely of the poor. A man may deceive a Rich man, but oppress him he Cannot, the reason is evident, *oppression is a Violent action of Injustice*, necessity compels a poor man to borrow, and the lender forceth him to pay an increase, in this is a violence which a rich man cannot be subject unto, because no necessity forcing him to borrow, it is not necessary but arbitrary whether he will borrow upon encrease: for although there be a morall necessity that if he will borrow he must pay an overplus, yet that he must borrow is not absolutely necessary: so then it is the necessity of the borrower that must concur to make a violent action in the lender.

If a rich man be forced to pay the whole forfeiture of a bond, it was his own folly to enter into such

such an obligation without necessity, whereby he doth enable the lender to deceive him by a legall meanes, who in extremity makes benefit of all that which the law did provide only for a caution of his indemnity: This deceit of the lender is injustice, but it is not the violent sin of oppression which is properly found in *Biting Usury*.

A second word there is found in Scripture which they say is an *Exegeticall* addition, which signifieth *any increase at all*. If what were said were true, it neither hurts nor helps the question if the text be understood of the poor only, for although all increase from the poor, yet what is that to the taking *Usury* of the Rich? But let us see a little how they strain this word [*tarbith*] for *increase*, first if *tarbith* do signifie

nifie of it self a *multiplying*, as it doth indeed, or an excessive increase, it is then all one with *Neshec*, which *Dr. Fenton* makes to consist in the quantity of the gain, but I think to be in the quality of the person from whom it is taken, and then where will they find their *exegesis* if these termes be *Synonymas*. Secondly I would know how *Dr. Fenton* can prove that the Scripture useth *tarbith for the Vsury of mony: The Prophets* (saith he) *who be true expositors of the law join both words together, applying them both indifferently evermore to one and the same thing*. It is true that the Prophet *Ezek.* joynes *Neshec* and *tarbith*, and so doth *Solomon*; but it is false that they apply them both indifferently *evermore* to one and the *same thing*, for they apply them not at all

all, they neither name mony nor *victualls*; I can find them but once applied in the whole Scripture, and that is by *Moses* in *Levit.* 25.36, there *Dr. Fenton* might have found them both named together, and then applied, *Neshec* to mony, and *tarbith* to *victualls*, so that the law of God no where in plain termes forbids the increase of *Mony:* which point is carefully observed by the translators of our Bible; for they all consent and agree to translate *Neshec* onely for *Vsury:* the words *tarbith* or *marbith* they have never translated by the name of *Vsury*. And in the *Proverb:* 28.8. whereas in the *Original* it is *tarbith*, our divines have rendred it *Vnjust gain*, therby intimating they did not think all *encrease* or gain to be meant, but onely such as was unjust.

It

It will be ſaid, that ſince *Mony* and *Victualls* are both in the ſame text, they are both of one *nature*, ſo that *tarbith* may be referred indifferently to either of them. *Anſw.* The text doth conjoyn them, not for being of one nature in ſpending or uſing, but the law did intend only the mention of ſuch things as the poor in extremity do neceſſarily borrow for maintenance of life, which is either victualls it ſelf, or mony which doth eaſilieſt and ſooneſt procure victualls: Otherwiſe theſe two differ as *Dr. Fenton* hath ſhewed in the example of a loaf and mony, the firſt is ſpent, the latter is uſed: victualls then when they are ſpent are quite conſumed and no further uſe can be made of them, it is otherwiſe with mony which cannot properly be ſaid to

to be ſpent, the ſame 100 l. that hath been uſed by one, may be uſed after by a 100 men ſucceſſively: and in the paſſing of it away ſome other Commodities may be procured by it of greater or equall valew, which may be uſed for increaſe; ſo that the uſe of mony is in a ſort *Perpetuall*. This difference well conſidered, there might be a greater reaſon to prohibit the *vſury* and increaſe of *Victualls*, then *Vſury* onely of mony: But I do not rely upon the argument from the names of *Neſhec* or *tarbith*, and the rather becauſe I think the true propriety of them (as of many other words) is quite loſt as to us

A third ſtrain of *Dr. Fenton* is to have the word *tarbith* to expound and explain the term *Neſhec*: we find *Neſhec* uſed alone in *Exod. Deut.* and the *Pſalmes*:

tarbith

tarbith is never used alone, but is joined with *Nesbec* in *Levit. Prov.* and *Ezek*: so then the first is used in all texts, the latter but in some. Now the question is, whether a particular word which is alwaies used shall expound a generall which is used but sometimes; or on the contrary as *Dr. Fenton* thinks, for he telleth us, *p.* 39. it is the manner of *Scripture after a law is given and a sin forbidden in a sensible term, by the addition of a more generall to express Gods meaning more fully, lest men should seek liberty in restraining the former termes more narrowly*; thus he, but what sense is there in his words *to express a sensible by a generall*? he should have said *a particular* by a *generall*, or a *sensible* by an *insensible*, and then his error would have been more sensible; for I trust it is the nature

nature of things ſenſible to *expreſs* things inſenſible, and of *particulars* to expound *generalls*, as may manifeſtly appear by the inſtance alleged by *Dr. Fenton*, and which makes ſomewhat ſtrongly againſt himſelf. *Theft* ſaith he *is ſet down in the Senſible term of ſtealing, the Holy Ghoſt addeth dealing falſely or Circumventing, teaching thereby over-reaching in bargaining by Cunning to be theft.* Here I ask if *Stealing* be a ſenſible term, whether *dealing falſely or circumventing by cunning* be a *Generall*, ſurely *Dr. Fenton* muſt not ſay it, for deceit in contracts is but a particular kind of theft or ſtealing, and therefore not a more but a leſs generall term then *ſtealing*: ſo that quite contrary to *Dr. Fenton* his doctrine the generall ſin of ſtealing is explained and expreſſed by the

the particular sin of deceit in dealing, therefore it is more reasonable that the particular term *of biteing* should expound the meaning of the generall word *encrease*, since nothing is more usuall then when a matter hath been particularly expressed, to mention it afterwards in more generall term.

Besides this shift of expressing the *Sensible* by the more generall term, is to imagine the wisdom of God *subject* to humane infirmitie, as if God had not been able to perfect his law *till the cavills of men, and their seeking liberty to restrain the termes* taught him how to mend it. No doubt if the law of God had intended the prohibition of all increase, it could have done it in plain and short termes (as it doth in *Murther, Theft*, & *Adultery*) by saying thou

thou ſhalt take *no increaſe by lending or letting mony*, but inſtead of increaſe the law ſaith *biting or oppreſſing of the poor*; if Murther and *Vſury* were prohibited & permitted alike, why doth not the Commandement ſay *thou ſhalt not murther thy poor brother but a ſtranger thou maieſt murther*? Surely God doth not uſe theſe qualifications for nought. It is demanded by *Dr. Fenton* upon the law *thou ſhalt not trouble any widow or fatherleſs Child*, whether it follow that I may trouble a married woman or a child that hath a father? *Anſ.* I may not. But yet the reaſon is not for that I am prohibited by this ſpeciall law for Widowes and Orphans, but for that by a generall Commandement of *not ſtealing* I am forbidden to oppreſs or trouble any man: The like may be ſaid of the

the words of *Solomon, thou shalt not rob the poor*, yet I may not rob the rich: though these words forbid me not, but because of the former generall Commandement. But the like cannot he said of *Vsury*, there being no former generall law that forbids taking *increase of the rich.*

But *Dr. Fenton* saith that *Vsury* bites the rich as well as the poor, and doth promise to prove it, but it seemes he forgot it, I am in doubt he is never able to doe it. Indeed he would perswade us that to lend to the Rich is to enable him to oppress the Common-wealth and so consequently the poor: But he doth not shew how the Common-wealth can be wronged by *Vsury*, and yet no particular person be first oppressed; sure I am the text speaks not of oppressing the Common-wealth

wealth, but expreſly names particularly thy poor brother to whom thou lendeſt that he be not oppreſſed. So that the law points at an apparent and ſenſible perſon whom *Vſury* bites.

But *D. Fenton* comes and tells us *p.36. Alas good ſimple widowes! can they tell when, or whom, or how many their Vſury doth bite? nay can the wiſeſt Vſurer of them all tell?* Thus *Dr. Fenton* becauſe he ſees that in ſome caſes he cannot ſhew how any particular perſon is oppreſſed by *Vſury*, therefore he flies for Sanctuary to the Common-wealth, to hide himſelf in the croud, whileſt he muſt confeſs he cannot tell who is oppreſſed, but yet the Common-wealth or ſome body in it (God knowes who) is oppreſſed.

But let us ſee how he knowes in general that the Common-wealth

wealth is oppressed by *Usury*, Forsooth he saith, it maks *things dearer & enhaunces* the prices of the *Mercat. p. 36. Ans.* the dearnes of things is caused either by the scarcity of the things themselves, or by the plenty of mony. As for the scarcity of Commodities it cannot be caused by *Usury*, for it neither eats up corn nor cattle, nor weares out apparell, nor destroyes the native commoditie of any Country. But Contrarily merchants and others (who by *Usury* are enabled to trade) do export such things as are cheaper and plentifuller here than in other Countries, that so they may gain *there*: and doe bring back such things as are deareſt and of most necessity at home, that so also they may gain *here*. So that *Usury* doth not only not cause a scarcity; but it is the meanes of plenty

plenty in a kingdome, for as it Conſumes not that we have, ſo it procures us that we want. As for dearneſs by reaſon of plenty of mony, it is no miſery but the happineſs of any Realm to know ſuch a dearth: thoſe places are not the Richeſt where things are cheapeſt, for then *Scotland* would excell *England*, but it is the want of mony which makes things cheap in ſuch Countries: Nor let any man thinke that if *Vſury* were not, things would be one whit cheaper, for by *Dr. Fentons* confeſſion, *p.* 38. if *Vſury were not, men would tenter their witts either in trading themſelves or imploying others*, ſo that the ſame gain would be raiſed an other way; for in the point of *Vſury* the queſtion is not whether gaines may be made of mony, but who ſhall have the gaines.

As

As for raising the mercat it is not caused by *Vsury*, the governours and Rulers of the Rates and prices of all things are the owners of mony and the masters of stocks, for the *Lenders* rule the *Borrowers*, and the richer govern the meaner, The monyed men proportion the valuation of goods, & by practice & custome agree in a common gain to bee raised by the Contracts of bargaining, selling, letting and the like. For instance, the masters of mony of this kingdome by their trading raise so much gaines as ordinarily amounts to 20. or 30. in the 100 at the yeares end; which being considered by the meaner sort of people, they reckon with themselves, that if they can borrow at 10 in the hundred that then by such trading their gaines may both pay the use and leave

leave them 20. or 10 l. gainers: ſo that the borrowers do trade by buying & ſelling in the mercat at the ſame prices that the owners of mony do, & it is the rates of the mercat that rules their uſing, and not their *Vſury* the mercat: The difference is onely that the owners prove the greater gainers and grow richer than the borrowers who keep but part of their gettings, becauſe that their ſtocks are not their own: And queſtionleſs the Common eſtimation of men would not valew at 8. or 10 in the 100 if it did not ordinarily produce a Competent increaſe both for borrower and lender. If any man object that the prime gain which comes by buying and ſelling, and leads the rate of *Vſury*, is too great, I know no other anſwer but this, if Common Cuſtome may not deter-

determine reasonable gaines, I know not how it will be resolved, since there is no rule in Scripture for it: but that men may grow rich by gain I find both practised and warranted by *Scripture*, neither are men restrained from gaining more by trade than is simply necessary for life and being.

If *Dr. Fenton* and those that condemn all *Vsury* had been so observant of the letter or literall sense of the Law as they do pretend, they would never have troubled themselves so much about Contracts which are not named in the Law: but would rather have Concluded that the very *taking of Vsury or increase* (though it be not contracted for) is utterly *unlawfull* by the law in *Levit.* 25. 36. where it is said, *Take thou no Vsury of him.* How then can

can theſe men juſtifie the *Taking* of their *fœnus liberale*, which they commend, or the *fœnus nauticum*, which they allow, or the *Contractus Societatis* or *partnerſhip*, which they ſo much extoll, ſince all theſe are expreſly forbidden by the law, *If to take any increaſe be unlawfull?* To the Iews themſelves the letter of the law did ſeem to condemn the *taking of a gratuity*, nay, ſome of them did think it *Vſury* if a man did but ſalute or bid good morrow to him that had lent him mony, if he did not uſe to do ſo before he borrowed it: becauſe in the Originall it is ſaid, thou *ſhalt take no Vſury of any word*, *Deut.* 23. our tranſlation hath it, *Vſury of any thing*: Surely ſuch ſalutations were not contracted for, nor were of any valuable price or mony worth.

I do not find any text brought by *Dr. Fen.* out of the New Testament against *Vsury*; for the truth is, there is none, although *D. Dow.* & some others do cite two texts, first *Mat.* 5. 42. *Give to him that asketh; & from him that would borrow of thee turn not away.* If we ask *D. Downam* whether every one be bound to lend to every one that asketh, his answer is, *Respect is to be had of thine ability, and of his necessity, and also (if it be not a Case of urgent and present necessity) of his honesty: if his necessity urge him to borrow, and thine estate enable thee to lend, thou art bound to lend unto him, especially if his honesty deserve to be respected: Lect. on the* 15. *Psalm. pag* 224. Why may not the same respects be observed in the interpretations of all texts against *Vsury*? Secondly he cites *Luk.* 6. 35 *Lend, looking for nothing*

nothing thence. Laſtly both he and *Dr. Fenton* do apply all texts that do mention lending freely, or charitableneſs to the poore, or mercifulneſs to our neighbour, as heapes of ſo many places againſt *Vſury*, although the name be not ſo much as to be found in the whole New teſtament as Condemned. For my part I do gladly hear all exhortations to *Charity*, and think them more than needfull; and if any man be ſo great an *Vſurer* as that he make himſelf thereby unable to be mercifull to the poor, ſuch a man may be juſtly condemned, and I ſhall never defend him: But to conclude, becauſe a man muſt give to the poor, therefore he may not let to the rich, is nó good conſequence. The text that bids me lend freely, doth not thereby forbid *not to let at*

all, but that upon severall occasions and according to divers Circumstances I may do either; if the Commanding to observe one sort of Contract were the Prohibiting of all other kinds, it would follow that I might neither give mony to the poor, nor sell victualls to the rich, because I am Commanded to lend both.

But let us admit that both in the Old and New testament the lawes against *Vsury* had been *Morall* and delivered in as generall termes as can be devised: Be there not many lawes and texts which must of necessity be expounded otherwise than the bare letter sounds, and according to such a sense as may stand with naturall reason, so that it contradict not any other plain or necessary doctrine, nor overthrow the *analogie* of Faith? There is a law

law of our *Saviour Christ* that ſaith, *ſwear not at all*, and again he ſaith, *to him that asketh, Give*; Neither of theſe Lawes muſt bee literally underſtood, but interpreted according to the rule of *natural reaſon*, & diſcretion. *Chriſt* forbiddeth *his diſciples to carry gold, or ſilver, or any manner of coin in their purſes*: I do not think that *Dr. Fenton* and others have followed the letter of this law, but I truſt they will grant an interpretation over and beſides the bare letter. There be divers ſuch texts, as, *if thy eye offend thee, pull it out*; *pray continually*; *if any ſue thee for thy Coat, let him have thy Cloak alſo*: all which if they were not otherwiſe underſtood than the bare words do bear, would bring great confuſion with them, and ſuch inconvenience as no reaſon nor law could or might

allow in any case. The light of *Nature* must help to guide us in the interpretation of many texts. It is *Dr. Fen.* own confession, p. 34. that *Usury* is a *Question of that nature, as is not only determinable by the law of God in Scripture: but also by the law of Nature, those Maximes and Principles of Common equity, which are written in the hearts of men by the finger of God*, which point had need be well considered, because as *Mr. Hooker* saith, *a number there are who think they cannot admire as they ought the power and Authority of the word of God, if in things divine they should attribute any force to mans reason, for which Cause they never use reason so willingly as to disgrace reason.* Pag. 97. *Nor let any man think* (saith he) *that following the judgment of Naturall discretion we can have no assurance*

to

to please God; for to the author and God of Nature how shall any operation proceeding in naturall sort, be in that respect unacceptable? the nature which himself hath given to work by, he cannot but be delighted with, when wee exercise the same any way without Commandement of his to the Contrary. Pag. 60. Now if any place in the Bible may receive an interpretation from the rules and principles of naturall reason, why might not the texts of *Usury*? since it is conversant altogether about *Covenants* and *Contracts* which are grounded only upon the laws of *Nature* and *Nations*: and many Cases there be which are confessed by all to be no apparent breaches of Charity, nor any injustice found in them; Insomuch that *Dr. Downam* is brought thereby to such a straight as he is forced to main-

tain *that there be other respects which make usury unlawfull besides the hurt of our neighbour*, p. 44. & 125. But if *Charity* be the *fulfilling of the whole law*, I will give them leave to talke their fill, yet I cannot beleeve how *Vsury* can be a sin if it hurt not my neighbour. Their pretences of the oppression of the Common-wealth by taking *Vsury* of the Rich is but a meer *Sanctuary of ignorance*, and a fiction which can never be proved, since it is practised in the Richest Common-wealths.

Whether the law of Vsury be Judiciall.

To prove the lawes against *Vsury* to be *Morall* and not *Judiciall Dr. Downam* produceth a main argument which is not in *Dr. F.* his words are, *The law which Commandeth free lending is not Judiciall, but Morall; for the same law which*

which commandeth the affirmative forbiddeth the Negative. Anſ. 1. *Dr. Downam* miſtakes in thinking *free lending and lending for gain* to be termes of *affirmation and negation*: *Lending and not lending* which are Contradictorily oppoſed are only *Affirmative & Negative termes*; *Lending freely or for gain* are only ſeverall ſorts of lending, and differing in qualities, and though their qualities differ yet they are both poſitive and affirmative; for it is an axiome *Contrariorum utrumque membrum eſt poſitivum*, In Contradictions and Privations, one term is alwaies negative, but it is not ſo in Contraries. Secondly let me retort *Dr. Downams* argument in a ſtronger Caſe. *The law which commandeth reſting on the Sabbath is not Judiciall but Morall, therefore the law which forbiddeth*

Kindling a fire on the Sabbath day is Morall, for the law which commandeth the *affirmative*, forbiddeth the *negative*: what will Dr. *Dow.* answer to this his own argument? here is affirmation and negation, *Resting* and not *Resting* in the kindling of a fire, not Contraries onely but Contradictories, yet I presume Dr. *Downam* will not conclude that kindling a fire on the Sabbath day is a breach of the *Morall law*. Dr. *Fenton* is of opinion *that if God doth forbid biting and oppressing Usury onely by his law, that then the law must needs be Morall*, and not *Judiciall*, except we will give *liberty to Christians to oppress and bite their Brethren*. pag. 44. The answer is, *The Equity of the law is stil in force, the Rigor of it is abrogated*; *or thus, the poor should not be oppressed is Morall, that they should*

not

not be oppreſſed by Vſury is Judicial. To make the meaning of this diſtinction clear, we muſt know that *All Judicial lawes* were made for the hedging in or encloſing of the Morall law, and whereas the Morall law was delivered either in *Generall affirmative* commandements, or Negative prohibitions, the *Judiciall* comes after and gives ſome particular politique directions in the obſervation of them; for example, the Morall law ſaith in generall *thou ſhalt Sanctifie the Sabbath*, then comes the *Judiciall* and ſaith, *Ye ſhall kindle no fire throughout your habitations upon the Sabbath day*, *Exod*: 35.3. ſo the Morall law tells us *thou ſhalt not ſteal*, the Judiciall adds, *if a man ſteal an oxe, or a ſheep, he ſhould pay five or four fold for it*, and in moſt caſes but double, *Exod*: 22.1.4 So then

then there is a generall equity in all Judicialls which is Morall and eternall. There is a law *Levit.* 25. 23. *the land shall not be sold for ever*: whereby selling of inheritance is forbidden, and this law did bind *Naboth* 1 *Kings* 21. 3. that he would not sell his inheritance to king *Ahab*. The equity of this law which binds all men, even infidels, to preserve or procure an inheritance or estate for their posterity, remaines stil in force; yet absolutely, not to sell any land is esteemed no otherwise than a Judiciall law fitted for the Common-wealth of the Jews: so the perpetuall equity of *Sanctifying the Sabbath*, *and of not Stealing* abides, although the kindling of a fire on that day is now arbitrary; and the Compensation of stealing is left to the positive lawes of each nation.

nation. The ſame law that forbids us to *ſteal*, bids us to relieve the poor, and ſo doth the equity of the law of *Vſury*. It is ſufficient that the generall equity of this law be obſerved, and the poor relieved, but that in particular they muſt be relieved by the not taking *Vſury* of them is not neceſſary. It was a ſin in any Jew to take *Vſury* of his poor, although he did relieve him otherwayes, becauſe God did reſtrain him to that particular manner of relieving the poor. But with us it is otherwiſe; if by any other meanes we do ſufficiently relieve the poor, then even the taking of *Vury* of them is no ſin nor oppreſſion.

Concerning the Judicials of *Moſes* we muſt alſo obſerve, that they were not ſo particular, but that many things were left to the Or-

Ordinance of the Magistrate or high Priest, and humane ordinances (as Mr. *Hooker* doth observe) *are many times presupposed as grounds in the statutes of God*, *Deut.* 24.10. There is a Judiciall Law which ordereth onely the manner how a pledge must be taken; this necessarily doth presuppose some former humane law that did order that pledges might be taken. Even that ill law or Custome of *divorce*, *Deut.* 24.1. is regulated by a Judiciall law, that it might therby be made less hurtfull. The reason why I note these things is, because the law of God concerning *Vsury* did presuppose and was grounded on a former law or custome of the Jews which was then in use and practice; And the speciall caution for the Poor might leave the Rich to the customes and lawes

of

of the Magistrats wch did always regulate all sorts of contracts. And wheras the law of *Moses* did allow *Vsury* only to *Strangers*; It doth not follow but that others that were neither *Poor* nor *Strangers* were left to the ordinary laws of the Country. No Magistrate could give a dispensation for *Vsury* towards the *Poor*, nor a *Prohibition* for it towards *Strangers*: so much as God ordered no human laws might alter; as for other cases not specified, they were left to the ordinary policy of the State. For we must not think that God provided all the civill lawes of *Israel*: His especiall care was to ordain lawes for the reformation of such sins as had been learnt by his people of the *Egyptians*, or for the prevention of such as might be taught them by the *Cananites*.

I know that Dr. *Fenton* doth inferre

inferre that the law which prohibits *Vsury* is *Morall*, pag. 45. because the allowance of it to strangers is onely a Judiciall, for unless it had been a sin, what needs a toleration: since lawfull things have no need of a permission? *Answ.* 1. If the allowing of *Vsury* to strangers be no Law at all but onely an Exception or *proviso* annexed to a former law, then it can be no Judiciall; all lawes do Command or Forbid something, but this if it be an exception doth neither, because it leaves the thing indifferent as it is the nature of all such provisoes in statutes. But if they will have it to be a Law, then it must bind affirmatively, and not only that one *May*, but that one *Must* take *Vsury* of a stranger, for in the Originall it is *thou shalt lend upon Vsury or shalt cause to bite*; And the

the Hebrews understand this to be a *Commandement* and not a *Permission* only.

Secondly whereas they Compare the allowance of *Vsury* to the *permission of Divorce*, they erre notoriously: for the difference between *allowing* and *permitting* is most manifest, as *Dr. Downam* Confesseth *pag:* 298. We allow those things only which we suppose to be good, or at least indifferent: But we permit only such things as are esteemed evill. God hath said by *Moses* thou *mayst* or *thou shalt take Vsury* of a stranger, he never saith *thou mayst divorce thy wife if she displease thee, or thou shalt put her away.* But the law is, *If she do displease thee, and find no favour in thine eyes, and if thou shalt put her away, and if she do marry an other, and if he also put her away, Then*

(saith

(saith the law) *her first husband may not take her again. Deut.* 24.1, 2,3,4. so that the end of the whole law of divorce is onely to keep the woman from returning to her first husband after a second mariage; all that goeth before is but by way of supposition: But if any man will Contend that the *Writing of a bill of divorce* is enjoyned in the law, it must follow that it is not a Permission but a Command, contrary to our *Saviours* doctrine who calls it a Permission, *Mat*: 19.8. And if it be a Cõmand, we must needs understand it as *an order only how and after what manner the divorce should be*, to wit *by bill in writing:* but not as an order that did Command men simply to be divorced. It is very little less than blasphemy to say that *Moses* law should allow any thing

thing that was evill. It is the power of the lawgiver to make both the *Rule* & the *Exception* to it. It is an over-bould ſpeech of *Dr. Fenton* to ſay, that notwithſtanding *Moſes law* had given liberty to the Jews to take *Uſury* of ſtrangers, yet it was a ſin to do it, and that they *Could not be abſolved in the Court of Conſcience*, although they might be *abſolved in the exterwall Court*, pag. 45.

Whereas Dr. *Fenton* doth pretend that a *Reaſon* that moved God to permit this ſin of *Uſury* to ſtrangers, was to *prevent the greater oppreſſion of his own People*, and that the *hardneſs of the Jewiſh hearts* was ſuch *that if they might not have taken Uſury of Strangers they would have made a Prey of their own Brethren*. ib. *Anſ:* How much doth this derogate from the lawes of God? as if they were

were not able to bridle one sin but by the toleration of some other; and if the hardness of mens hearts must be born with, since mens hearts are as much hardened in other sins as in *Usury*, why are not some other sins tolerated as well as *Usury*? surely the *Idolatry* of the Jews was as great as their *Usury*, & *their hearts went a whoring after strange Gods*, yet *Dr F.* cannot shew that any *Idolatry* was permitted them in any kind.

I find some *Criticism* used by *Dr. Downam*, upon the Hebrew names in Scripture which signifie a *Stranger*, *pag*: 208. but I cannot find that *Dr Fenton* doth make any use: the three sorts of *Ger*, *Toshab*, *and Nocre* (which he translates to be *Advena*, *Inquilinus*, and *Hostis*) are insisted upon by him. He would have *Nocre* to signifie an alien by *birth*, *Religi-*

gion,

gion, *affection*, and *Dwelling*. This distinction he labours not to prove, neither do I think it sound, because I am informed by those that are skilfull in the tongues that the Hebrew *root* doth signifie to be *ignorant* or not to *know*, so that whosoever was unknown, was *Nocre*, a stranger, though he were not of another nation, if he were but onely *of an unknown* family; the word is used by *Salomon Pro.* 5. 20. and 6. 24. where he calls a *Whore a strange woman*, no man must think that he meanes such *whores* onely as are of an other *nation or religion*, but all such as were not to be known to them as wives; So God forbids the Jews *Deut.* 17. 15. *that they should not set a stranger to be King over them*: surely he meant such strangers as dwelt amongst them, there

was

was little danger that they would Choose an Enemy that dwelt in another Country. I find in *Levit.* 22. 10. it is said, *there shall no stranger eat of the holy thing*, that is, whosoever is not of the Priests family; so that the word *stranger* may sometimes signifie an *Israelite* of another family or tribe.

Dr. Downam affirms that a Jew was permitted to take *Usury* of such strangers onely as were enemies and aliens both in affection and religion, birth and habitation: so that if a stranger did but dwell or converse amongst the Jewes, they might not take *Usury* of him. But *Dr. Downam* should remember that a *Brother* and a *Stranger* in the *Levitical* law are *Membra dividentia*, he that is not a brother is a stranger, and *è contra*, *&c.* Now a brother

Levit.

Levit: 25.42. is onely *an Israelite circumcised brought out of Egypt*, If therefore the law had prohibited only the taking of *Vsury* of an *Israelite*, and allowed onely the taking of it of an *enemy stranger*, then the law had been very imperfect and defective, because there had been no direction in the law for such strangers as had been sojourners or proselytes, who are neither *Brethren nor enemies*; if any man think that a *proselyte or sojourner* might be accompted a brother let him but read *Levit:* 25. *verse* 39, 40, 42, 44, 45, and 46.

I Know *D.F.* p.46. would have us think that a Jew might take *Vsury* of a stranger, because he might also kill him: But I must deny that any privat man might kill a stranger but in a publick warre; neither can the like text be

be shewed for the allowing of the murther of a stranger by a privat man. Many places there be in which the Jews were enjoyned to be Charitable to strangers, *Thou shalt not vex a stranger, Exod.* 22.21. *Love ye the stranger, for ye were Strangers in the land of Egypt. Deut.* 10.19. *Thou shalt not Oppress a stranger, for ye know the heart of a stranger, because ye were strangers in the land of Egypt, Exod:* 23. 9. There was in many Cases the self same Charity to be shewed to the stranger as to the poor; The corners of the *harvest*-field, the *gleanings* of it, and *the single grapes, Thou shalt leave for the poor and the stranger,* Levit. 19. 9. Also the *third yeares tith, the forgotten sheafs, the feasts of Pentecost, and of Tabernacles,* were apointed for the relief and benefit of the *stranger*, the *fatherless* & the *widow*. There

There are many more lawes to be found in the books of *Moſes* which are made for the benefit of the poor; the equity of them certainly continues unto this day; but no man but a Jew is ſo mad as to ſay the rigorous obſervation of them is to be required of us; why then muſt the law againſt *Vſury* more than all the reſt be neceſſary? It may as well be affirmed that all the *Judiciall* lawes are *Morall*; let them ſhew us by what rules they do diſtinguiſh theſe lawes: I doe apprehend that the Iudicialls were converſant about the morality of outward actions, as about the diſtinctions of *right*, the diſtributions of *inheritance*, the *Puniſhments of Crimes, as of Blaſphemy, Perjury, Murther, Adultery, Manſlaughter, Fornication or the like*; *about the rites of Mariage,*

of Divorces, of Bondage, of Usury, of Witnesses, and of many other actions, the equity of all which is reducible to some one Commandement or other of the Morall law.

If all the Leviticall lawes be read over, it cannot be found that ever any Judiciall was delivered with such restrictions, qualifications, and diminishing termes, as the law of *Usury: thy brother, thy poor brother, thy poor brother that is with thee*; the generall name of neighbour is not so much as used about it: it is no where said *thou shalt take no Usury of thy neighbour*. Besides this law hath an allowance which no other Judiciall hath. And lastly, this law of *Usury* taken in the sense of our adversaries (for all increase from the rich also) can be no breach of *Charity* in some

some Cases, and then there will be no Equity in it, which is found even in all *Judicialls*. Indeed I find *Dr. Downam* brought to such straights as to maintain that there be other *respects which make Usury unlawfull besides the hurt of the neighbour*, *pag.* 295. But if it be forbidden by the Morall law, and that law be a branch of the second table (as *Dr. Fenton* affirmes) how it can be a sin without breach of *Charity* to the neighbour, passeth my understanding, since Charity is the fulfilling of the *law*.

Whereas Dr. *Downam* doth compare *Usury to an officious lye*, which is a sin, though it hurt not but help the neighbour, *pag.* 277. It is true an officious lye is a sin: but a sin against the first Commandement of the first Table as it is repugnant to *Truth* which

is an essential Attribute of God: Every one that lyeth doth therby deny and forsake the true God. Let Dr. *Downam* tell us, which Commandement of the first Table is by *Vsury* violated. It is not sufficient to say, that all *Vsury* is a breach of our allegiance to God, this is but begging of the question, unless this disobedience can bee referr'd to some particular precept of the Decalogue, as the officious lye is to the first; as for general disobedience, it is a sin that goeth through all the Commandements, and is to bee referred to each particular precept according to the several objects of it.

It is further insisted on, that the prohibition of *Vsury* is coupled in *Ezechiel* 18, with sinnes against the Moral Law, from thence an inference is made, that it

it ſelf muſt be Moral.

Anſw. 1. If we look upon other Scriptures we ſhall find Judicials and Morals mingled together in the giving of the Law: We may ſee in *Levit.* 19. 9, the prohibition of *Reaping* the corners of the field, and gleaning the Vineyards, which were Judicials, ſet immediately before the forbidding of Stealing, Lying, and Swearing, which are parcels of the Moral Law. In the 13 verſe of the ſame Chapter it is ſaid, *Thou ſhalt not defraud thy neighbour, nor rob him: The wages of him that is hired ſhall not abide with thee all night untill the morning.* The former of theſe is Moral, the latter is Judicial. And alſo in the 16 verſe, the prohibition of *Enchantment*, or Witchcraft, is ſet between the forbidding of *eating bloud*, and

rounding the corners of the head, and *marring the corners of the beard.*

Secondly, whereas Dr. *Downam* saith *pag.* 219. *The Holy Ghost describes a wicked man, that should dye the death if he did any of these things.* Wee find first that the words in the Original are, *if he do like to any one of these things*; or as our new Translation hath it in the Margent, *or that doth to his brother besides any of these.*

Thirdly, whereas Dr. *Downam* conjoyns these sins by the disjunctive *Or*, our new Translators use the Copulative *And.*

Lastly, to confound Dr. *Downam's* opinion, the Text in the 13 verse saith, *He hath done All these abominations he shall surely dye.* And good reason; for some of the crimes were capital by the Law of *Moses*, as *Idolatry* and *Adultery*,

dultery, but *Vſury*, or the taking and keeping of a pledge hath no kind of puniſhment appointed by *Moſes*, neither hath any man denied, but that the law of reſtoring the pledge was Judicial, and not Moral.

But let it bee granted to Dr. *Downam* (that which he can never prove) that death is threatned by *Ezekiel* to Uſury; May it not ſtil be a Judicial Law for all that? Was not the Law in *Exod.* 21. 1. a Judicial, whereby it is ordered *that an Hebrew bond-ſervant ſhould at ſeven yeares end be free and at liberty*? Yet God doth threaten the people for breaking this Law, by reaſſuming their ſervants *with a liberty to the Sword, to the Peſtilence, and to the Famine*, *Jerem.* 34. 17. Alſo in *Numb.* 15. 35. *the man that gathered ſticks on the Sabbath day was*

stoned by Gods appointment, and yet the Law was but Judicial, and not Moral.

Before I conclude this question about the nature of the Law against *Vsury*, it is not impertinent to remove a scruple that is objected. It may be asked of me that maintain there is no Law in Scripture now in force against *Vsury*, what Text can be shewed that it is lawful?

Answ. There needeth none; for if the Law of God doe not now forbid it, it is sufficient that the Law of *Nature*, *Reason*, and *Custom* doth make it lawful. *About things easie and manifest* (saith Mr. *Hooker*) *by common sense, there needeth no higher consultation--- the meanes of some things in such, that to search the Scripture of God for the ordering of them, were to derogate from the reverend authority,*

thority, and dignity of the Scripture.

If I should ask Dr. *Fenton* what Text he hath to prove that *Leting* of Land is lawful, it would ask him sometime to find it; or how he can warrant the selling of Land which is expresly forbidden in the Law, *Levit.* 25.23. It may be I can allege as good a Text for *Vsury*. I think the 6 of *Luke* which is alleged against it may with better reason be produced for it, and if we will stand to the literal and common sense of the word in the Originall, we may conclude that it is not only allowed, but commanded there; what exceptions can be taken, if a man should translate δανίζετε, *lend upon usury*; Is not that the proper signification of the word in all Authors? Hath not the Latin borrowed the words *Danista*

an *Usurer*, and *Danisma Usury*, from the Greek? Although our Translation saith only *Lend*, this general word may also comprehend *Lending upon use*. It accords with the Original, and crosseth not the Translation. But it may be *Lending upon usury* may be here in this Text allowed by our adversaries, if we will observe, as it followeth in the Text, *to look for nothing again*. These words of *looking, or hoping for nothing again*, although they be answerable to the vulgar Translation, yet in the Original they have another more proper signification, as is shewed by *Beza*, who is no friend to *Usury*; you shall have his words in his Annotations upon *Luke* 6. 35. *I confess* (saith he) *that I never read in any other place the word* ἀπελπίζειν *in this signification* [to hope for] *when as*

as properly it ſignifieth to Deſpair. And ſurely it may ſeem that our Lord in this place did conſider what doth many times hinder men from lending their money to their poor brethren (to wit the fear leſt they loſe what they lend to the poor) and therefore he would remove that fear from us, and bring us to this paſe, that as often as we help our neighbour for Gods ſake, we ſhould never think that it may be to our loſs, ſince God makes himſelf a pledge and ſurety that we ſhall receive with much uſury whatſoever wee lend: If we follow this interpretation, then inſtead of [looking for] *we muſt ſay* [deſpairing] *and ſo the Syriack Interpreter underſtood this place* —— *They are deceived which wreſt this place for the prohibition of Uſury; as if Chriſt had forbidden us to covenant or exact any thing above the principall.* Thus

for

far *Beza*; wherein we have his opinion and reason, and by the help of his direction the Text may bee most fitly translated, *Lend upon Usury not Despairing*; for to lend looking for nothing again, is, as the Bishop of *Winchester* hath observed, not to *Lend* but to *Give*.

Of the Properties of Letting.

Dr. *Fenton* and Dr. *Downam* cannot endure to hear that *Usury should be called Letting of money*. Many are the properties that are (as they think) *inseparable* from *Letting*, and cannot be found in the putting out of money. *Hiring or Letting* (say they) *is of such things as are not spent in the use, But have a fruitfull use in themselves naturally; which use may be valued a part and be let, the property remaining in the letter, and the thing*

thing if it miscarry without the fault of the hirer belongeth to the letter only. If we ask from whence they collect these distinctions and properties of Letting; or whether they have any rule for them in Scripture; They answer, though there bee no Text for them, yet the Law of Nature and Reason which ordereth and regulateth all humane contracts, doth teach them. Let it be so: And let us have leave a little to examine by the same Law of Reason and common sense these properties of Letting, and see whether any or all of them may be applyed to money.

I confess things hired are not to be spent in their use. Neither is money properly said to bee spent in the use, it is not to speak like a Grammarian, to say any thing is spent in the use, for

spending

spending and *using* are in propriety of speech distinct actions, howsoever, by reason of some similitude between them, they be used promiscuously by the vulgar phrase. A thing used doth remain the same after the use to be used again; but a thing spent perisheth or is consumed in the spending, so that no further use can be made of it. Money is not thus spent, at the most it is but said to be spent to him that hath made no profitable use of it, in it self it remains *unspent* and *useful* to others. Thus much Dr. *Fenton* saw very wel, & therfore he doth not urge this property as Dr. *Downame* doth, but seems to yeeld, and say *pag.* 165. *That also of spending money in the first use, as if the use and property were inseparable, so much stood upon by School Divines* (he might also have

have said, (Canonists) *is much subject to cavill, for there is sensible diference between spending a loaf of bread, and disbursing mony for gain —— a loaf once eaten hath no second use to him that eat it, or to any other: mony laid out remaineth still the same to be used by another, and the same in the Equivalent to him that laid it out: and the same individuall peeces which once delivered shall never happily return again to the same person; there may be some difference in a Philosophers brain, but not in a merchants purse, it is all one whether it be the same shilling or another as good.*

Things let (say they) *must have a fruitfull use naturally in themselves.* If this property were true I would confess mony might not be Let. But Common sense doth Confute this assertion,

tion. What fruitfull use hath a house naturally? doth one house beget or bring forth another? is it not an artificiall thing as tools, instruments, and furniture? all which are lawfully Let although they have no more fruitfull use by nature than mony hath. All things that are usefull either by *Nature or Art*, that have either *fructum* in themselves, or *questum* by industry, are the object of *Letting*: no man will deny the artificiall use of mony, yet I find Dr. *Fenton* to contradict himself in this point of the use of mony, his words are, *pag.* 20. *The monyes of a tradesman be his tooles by which he getteth his living: if therefore they be retained from him, to his sensible detriment, satisfaction is due in justice and equitie without touch of Vsury.* In an other place (*pag.* 94.

94.) forgetting this he determines that *Nothing whatsoever it be, naturall or artificiall, but it serveth either to feed, or to cloath, or to work withall, or to play withall: yet for mony there is no use to be made of it.*

Mony having thus *an Artificiall use* distinct from the spending of it, this use of it is *valuable* a part, and to be guided by the same rule which serves for the true valuation of any other Lettable thing: we see by dayly experience that the valuation of the use of mony is more certain than of other things. It remaines then, *that mony hath an artificiall use which is valuable, and in that respect may be let as other artificiall things are.*

To proceed. Another property (say they *pag.* 16.) of *Letting is, that the use only is passed over,*

the

the property resting in the Lender. Whereas Lending passeth over the property with the use for the time it is Lent. Is this true? Then a man had need take heed of Lending, If when he lends he loseth the property of the thing lent? Surely I should think that *the use* and *possession* only (and not the property) is passed away in Lending and Letting also. He that hath Lent his mony during the time that it is Lent and out of possession, hath power in law and a right to give or bequeath at his pleasure, which he could not dispose of, if he had no property in it. A property in the sum Lent, or to the equivalent, which is all one as Dr. *Fenton* hath ingenuously confessed. It is a frivolous exception to say he hath not a property in that *Individual* shilling which

which he lent, ſince art hath ſo ordered it that all ſhillings are the ſelf ſame in uſe, and as one ſhilling. If all other naturall and artificiall things, which are confeſſed to be Lettable, were of equall value and uſe; if all horſes and ſheep were alike in all things without any reall difference in their goodneſs and uſe, it would be all one to him that had let his horſe, to receive his own horſe or another.

We muſt underſtand (ſaith Dr. *Fenton*) *a ſpeciall kind of Lending which for penury of worder, and narrowneſs of our Engliſh wanteth a proper terme. In Latine it is called* [*Mutuum*] *or mutuatio* —— which is ſaith he *the free paſſing over both of uſe and property for a time, at the time ended to receive the like again*; thus he. If it be paſſed over but for a time, then at the

the time ended the same again must be restored; why then doth he name only the like *again*? if onely *the like be restored* then the thing it self is passed over for ever.

Dr. *Wilson* the *Civilian* in his booke of *Usury* puts the Case how hiring of mony may bee lawfull; if a man borrow a 100l onely to make shew of, either at some bank, or otherwise to perswade the world that he hath a 100l of his own, and if he *never* spend it but presently restoreth the self same 100. pound which he borrowed, in this Case the Lender may lawfully take and Contract for hire or use of his mony because it is not spent in the use. This Case is borrowed from the Papists, and allowes a man to take *Usury* for helping to Cosen the world, although himself

himself be no way damnified by the want of his mony.

But the grand impediment of Letting mony is that the *Borrower* (say they *pag.* 17.) *stands to the hazard of it*, which they think to be against the law of *Exod.* 22.14.

Answ. Concerning *hazard*, we find that in the Law *Exo.* 22.12. about beasts delivered to a neighbour onely to keep, that if *a beast be stoln he shall make restitution to the owner thereof*, which Case shews the owner doth not stand to the hazard, but the keeper only, who yet hath not so much as the use or property but only the possession of the beast, so *Iacob* tells *Laban Gen.* 31. 39. *that if any of his sheep were stoln by day or by night, that he made them good*; therefore their rule faileth which saith

ſaith *every thing periſheth to the right owner*. pag: 17

It may be anſwered, that whatſoever the Law was for things depoſited, yet for things Let the Law is Cleer that the borrower ſhall not make it good or ſtand to the hazard, becauſe *it came for the hire. Exod.* 22.14. This Text is either not underſtood, or wreſted to a falſe ſenſe, as may beſt appear if we cite the whole Text which Dr. *Fenton* hath curtald to fit his own turn; the words are, *If a man borrow ought of his neighbour and it be hurt or dye, the owner thereof not being with it, he ſhall ſurely make it good, but if the owner thereof be with it, he ſhall not make it good, If it be a hired thing it came for the hire.*

Anſw: 1. It may be thought the Text intends beaſts only and not

not other goods or mony, because the four precedent verses to which the Text hath reference are restrained to ox, asse or sheep, or any beast: and the same words of dying and hurting are used in this verse which are used in the tenth verse where beasts onely are meant, which words are not so proper to express all sorts of hazards of other goods: withall there is greater reason that the hazards of beasts should not light upon the borrower, because, they by the course of nature are daily subject to decay and perish, and many secret diseases lurk in them which the borrowers cannot discern; whereas other goods, and especially mony, are not of so perishable a disposition, but their suddain destruction is most times by the act or folly

folly of man, and not from the God of Nature. But if it be granted that the Text understands all goods, then indeed it comes home to the point of *Usury*; but it makes for it and not against it: for the law is for *things let, that if they be hurt the owner thereof not being by, he* (the borrower) *shall surely make it good*. Now in Usury the owners do not, and for the most part can not stand by and see how their mony miscarries. Indeed when a thing is hired for some particular end wherewith the Letter is made acquainted, then he may stand by and see how it perisheth, and of such a lending the Text is best understood. It is plain that the Letter (though he had the property) did not alwaies stand unto the hazard but onely when he stood by, *that it might appear* (saith

(saith Dr. *Fenton pag.* 17.) *not to be the Borrowers default.* The Rabbines expoſition of this text may give ſome light to the underſtanding of it, and it is thus; *The words are, if it be hurt or dy: that is, hurt in the uſe, or dye in the work for which it was hired: If a man* (ſay they) *hire a tool for ſome particular, if it be hurt in doing the work it muſt not be made good: ſo if I hire a horſe to plow with, and the horſe whileſt he is in ploughing dy, then I am free. But if I borrow goods or beaſts, and they be loſt or ſtoln, or hurt, or taken away by violence, or dy, I am bound to pay all, if ſuch violence do not befall it in the time of the work. If I borrow a horſe to plow with, and he dy either before or after the ploughing I muſt make him good.*

To apply this Text to mony,

the most that can be gathered is, *that if mony be hurt in the using of it* without the Borrowers default it must be at the *Lenders hazard*. But since mony is not ordinarily hired for any one particular use expressed, but in generall to be imployed at the Borrowers discretion; how can the Lender of mony be comprehended within that law which did onely relieve the Borrower in case the thing hired did perish in that speciall use for which it was borrowed? The ground of the equity of this Law is, *if the thing hired be not able in its own nature to do the thing for which it was hired without perishing, the Hirer is not to be at the hazard of it*; mony all men know to be able of its own nature to do the thing for which it was hired; if by any Casuall or exter-

externall accident mony periſheth, the Law provides no remedy in ſuch Caſes. It is one of the ſingular benefits and the privilege of mony in traffique that it is not of a periſhable nature. The ends why policy found out the uſe of mony were many: *the Chief* are, that it might be *Durable, Portable*, and *Partible*.

But to grant them that he that ſtands to the hazard ſhould have all the games: Is there not hazard to be found in the Letter as well as in the Borrower of mony? many that have Contracted for *Uſury* by bonds and other ſecurity have loſt both Principal and Uſe, and have been thereby undone; ſurely ſuch people find hazard in it. It is a rule in the *Civil law*, that *omnis mutuatio plerumque damnoſa, eoq; meretur compenſationem.*

It is fit therefore in equity, *that since* the Lender stands in hazard there should be a gain due to him also.

But this gain they allow, *So it may be conditional, if the borrower gain.* And this conditionall gain can only be by *Partnership.* As for letting of mony upon Condition of the Borrowers gain, it is a course as mischievous and impossible as the letting of land upon like Condition; without experience no man can sufficiently describe it. It would make all bargaines to be nothing but suite in law, no debts should be due but upon proof and witnesses examined; nay there is no possibility of knowing mens gaines or losses without racking their Consciences, and opening a gap to perjury for every unthrift in his own Cause. Or if loss and gain could

could be diſcovered, how ſhall it appear, whether it be by default of the party or by the act of God? many times they both concur, and are ſo twiſted that no eye of reaſon can diſtinguiſh them. In effect, hereby every man is tied to have an eye to watch the diſburſing of every penny which he lends, which is a thing impoſſible, and therefore the law of reaſon and of all nations doth think it fitter to tolerate ſometimes a miſchief which may happen by an unfortunate bargain upon an *abſolute contract*, than to allow of a perpetuall inconvenience which would follow a *Conditionall Covenant* and overthrow the contracts of all Common-wealthes. In all letting there is a conſideration had of the caſualties, and becauſe there may be a poſſibility of extraordinary gaines it

must countervalue the extraordinary loss if any happen, both which being contingent, and seldom happening, they are set one against the other, and a middle indifferent rate between them, which doth ordinarily happen, belongs to the Lender, who is not to partake in the extremes: Because it is rarely to be shewed that any loss can befall a man in liveless goods meerly by the act of God, without the concurrence of some fault of man, either of negligence, ignorance, indiscretion, wilfulness, or the like. To conclude, the rule that guides the valuation in all Contracts, is not what *Casually is or may be*, but what *ordinarily* is like to happen.

As for Partnership (which is a project much magnified by the adversaries of *Usury*) let it be examined

amined what it is. Thoſe are truly *Partners* who in a *Joint ſtock* communicate their *paines* and *travel*: ſo that an equal induſtry and privity goes along with the imployment of the ſtock. There the Truſt being reciprocal, the covenants may be equal, and the Laws do relieve men upon their Covenants and mutual agreements in ſuch *Partnerſhip*: But in this their pretended Partnerſhip, where there is but a truſt of one ſide, no equality of pains, no privity in trade, no partnerſhip in the matter of ſtock, nor in the form or conſent of *negotiation*, but onely a Partnerſhip in the gains, this cannot truly be called a Partnerſhip, but it is only the office of Maſter and Servant under another name, or falſe title, and differs only in the manner of the wages, which in

this their case of Partnership is contingent, and in the other absolute. Besides, in this their counterfeit Partnership, a man may make no covenants that can be good in Law, nor so much as take a Bond for his Principal, but hee must onely trust to the honesty of his friend, since no articles can be made that shall be legal except they bee *Usurious*: nor can be drawn so reasonable as an honest man will be bound by them, or so firm that a dishonest man cannot safely break them.

It seems to me, that after all the stir about *Usury*, Dr. *Fenton*, and all his fellows doe allow of *Usury* under another name, *Interest*; they all agree a man may lawfully take so it be against his will; that is, when a man detains his money from him against his will,

will; but if a man be ſo courteous as to conſent that another ſhall keep his money, hee muſt then ſtand to the curteſie of the Borower.

Now that which they doe call *Intereſt*, they doe allow in two caſes; Either where there is, firſt *Damnum contingens*, a loſs ariſing; or ſecondly, where there is *Lucrum ceſſans*, gain ceaſing: ſo that if either a man receive *damage*, or that his *gain* be but *hindered*, he may take intereſt. Now in all lending a mans gain is hindered, becauſe he hath not his mony to employ when occaſion ſerveth, or ſhall be offered: Nor is it requiſite that *ceaſing gain* muſt be certainly proved; for that is impoſſible, being a thing contingent, but a probable eſtimation of it may bee allowed (by Dr. *Downams* confeſſion *pag.* 166.) &

in all probability *gain ceaseth*, or is hindered, whereſoever there is Lending. Therefore by this their own Scholaſtical diſtinction there is Intereſt due for all Lending. Only *ſucceſſive* or *interuſury* which is before delay of *Payment* they would fain exclude. But if *Intereſt* be (as their own *Melancthon* ſaith) *a debt which hee oweth by the Law of Nature, who hath been to another an effectuall cauſe of damage, or hath hindered his gain*, becauſe *Nature teacheth that no man muſt be enriched by the hindring of another*, according to the Rule of St. *Paul* 2 *Cor.* 8. 13. *That one be not eaſed, that another may be burdened*: Then it will follow, that delay of *Payment doth naturally begin* from the firſt *minute* of Lending; if any will abridge himſelf of the privilege of

of *Nature* by the *giving* day for payment, yet if it be by a *Covenant conditional* to pay so much interest at the day appointed, then such a Contract is but the ratifying of a naturall debt, with a *dilatory* payment for the benefit of the Borrower.

Thus after all their pretended impediments of Letting money, they are forced to confess at last, that an *interest* may be justly due and taken; which is nothing else but a hire, a recompense, or an *increase of it*. The sole doubt they make is about the *contracting* for *interusury*. Neither is Dr. *Fenton* nor Dr. *Downam*, so stif against contracts when they come to the point, as at first they made shew of. Dr. *Fenton* saith, *pag.* 64. *It is great reason that the debtor should trust the creditors chari-*

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ty & not the creditor rely upon the fidelity of the debtor; and Bonds may in some cases be lawfully made, which cannot so lawfully be exacted. This he speaks of contracts without any condition of hazard expressed.

Also Dr. *Downam* doth adde, *That if there be a covenant of the one side* in eventum lucri, *to partake of the gain, and on the other side but a purpose of bearing part of the loss — I would not altogether condemn such a contract*, pag. 163.

Thus both these Divines doe consent that a contract may bee made for interest, if there be but a purpose in the Lender not to exact or oppress thereby. Yet like men uncertain and doubtful what to conclude, they sometimes allow a man to take interest so he doe not contract for it, at

at other times to contract for it, ſo he do not take it, (*pag.* 27.) *One while a Bond may be lawfully made, ſo it be not exacted; another while it is lawfull to take where it is not lawfull to covenant or contract.* Again, Dr. *Fenton* ſaith, *pag.* 129. *That the poyſon of Uſury is in ſome contracts ſo cloſely and cunningly conveyed, as the very turn of the intention of the minde may alter the caſe to make it juſt or unjuſt; the contract remaining one and the ſame.* If one and the ſame contract may be juſt and unjuſt, then all contracts are not unjuſt by his own confeſſion. In another place (*pag.* 125.) he tells us, *We may puzzle him with ſome caſes ſo cunningly contrived wherein we can find no difference either in Juſtice or Charity from other lawfull contracts: Then quære whether it be within the Definition of*

Uſury

Usury---If it appear just and lawfull, it shall not appear usurious, it may perhaps border or coast upon Usury. Yet our conclusion shall still remain entire, That Usury properly so called is simply unlawfull. A trim Conclusion. But what are we the wiser for knowing that all *Usury* is unlawfull, unless he teach us what is *properly called Usury*? This is the main doubt, *what is Usury, and what is not; whether all increase, or increase onely from the poor; whether all contracts for gain by mony be Usury.* If Dr. *Fenton* may be puzled, and not be able to tell us what Contracts differ from Justice and Charity, and what not; If one and the same contract may bee just and unjust; if that *usurious* contracts, *as they do approach unto equity so far forth do decline the nature of Usury*, then are we still igno-

rant what *properly is Vsury*, onely we may know that it is *unlawfull* if we knew what it were. This is the laſt and ſafeſt retreat that Dr. *Fenton* findeth.

Concerning humane Teſtimonies of Fathers, Councils, Divines, Heathens, and Laws.

As for the Teſtimonies of Fathers and Councils we do affirm that neither Father nor Councill did ever define *Vſury* to conſiſt in the *contracting* for gain, they were not ſo curious or ſubtle in thoſe Ages, as to define it at all. But moſt of thoſe few paſſages that are in them may beſt be underſtood to mean only ſuch *Vſury* as was an oppreſſion to the poor.

As for *Ariſtole*, *Plutarch*, *Cato*, *Seneca*, *Pliny*, and ſome others, I ſhall offer the confeſſion of Dr. *Fenton*,

Fenton (*pag.* 65.) *Who is perswaded that the very conceit of these grounds* (*of the Philosophers arguments*) *hath moved many to think more favourably of Vsury it self than there is just cause---The force of the Philosophers argument taken from the barrenness of money, and the unnatural brood of Vsury, being mingled with metaphors, if it bee not rightly apprehended, is obscure and doubtfull. That also of spending money in the first use, as if use and property were inseparable---is much subject to cavil.*

By these passages wee may see what little confidence Dr. *Fenton* putteth in the arguments of the Heathen Philosophers against *Vsury*. As for the bare authority of these men, the speculative determinations of so few Philosophers, are no way to bee compared with the grave wisdom

dom of whole ſtates which by practice and by Cuſtomes in all ages have approved thereof. I know the abuſe of *Vſury* hath given juſt cauſe both to Chriſtians and Heathens to declame bitterly againſt it. *Merchandiſing* (as Dr. *Fenton* tells us) alſo Letting of *Land*, and other tradings have their manifold abuſes, and yet are things lawfull in themſelves; and whereas all other trades do oppreſs but within their own Circle or limits, and in ſuch particulars wherein they deal, *Vſury* dealing with mony which is uſed in all trades, hath made the abuſe thereof more generall, and therefore all men have the more frequent occaſion to ſpeak againſt it.

The Civill law which was gathered out of all the beſt antient

tient Lawes both *Heathen* and *Christian*, and which is most in use at this day, doth allow *Usury*. The Lawes of *Venice*, *Genoa*, and the Low-countries (three simply the richest states in *Europe*) do allow thereof, and yet are free from poor, which perswades that *Usury* is not so hurtfull to a state. As for the statute Lawes of this land they do vary, and one statute mislikes and repeales another, but they all allow *Usury* of Orphans; And the Law last made since the death of Dr. *Fenton* in the 21. year of king *James* doth allow eight in the hundred.

The Constant practice of the Common Law of this *land*, and also of the *Chancery* in point of equity, doth not only allow Interest where there is a Contract for it, but also doth give it where there is none. To

To end this point, if all Laws and ſtates had thought all *Vſury* to be unlawfull, and alſo miſchievous to a Common-wealth, And if that *Partnerſhip* be a meanes both lawfull and beneficiall, It were ſtrange that no practice nor Law of any nation would never eſtabliſh this latter; And for all the world to tollerate a ſin when ſo eaſy a remedy had been at hand, had been an *univerſall* madneſs.

Argument againſt Vſury.

It is to ſome Doubtfull, therefore unlawfull, becauſe Whatſoever is not of faith is Sin.

Anſw: This argument doth not make it ſimply unlawfull to all, but onely to ſuch as doubt, and therefore it proves not the point. For Dr. *Fenton* his poſition

on is, that *all Vsury* is of it self a sin, and so nothing indifferent. By this Doctrine he first perplexeth the understanding of the weak, and so makes them doubt, and when he finds them doubtfull, he useth their doubting to prove it unlawful, because they doubt, whereas if it be simply a sin of it self it is as well a sin if a man doubt not as if he doubt. And the place of *St Paul Rom*: 14. by him alleged, speaks not of sins, but of things *indifferent* (*as eating*) which by doubting onely are made sins to the doubters, and to no body els. Now if the Cause why men doubt whether all Usury be sin, be onely for that Dr. *Fenton* and some others teach so, then the sin of those that doubt may fall heavy upon the Causers of it. And if Dr. *Fenton* allow Usury

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to be doubtfull, it cannot but argue rashness peremptorily to determine there is no doubt of it, thereby to ensnare the Consciences of the simple.

Besides the doubting spoken of by the Apostle, though it were of things indifferent, yet formerly before the comming of Christ they were things necessarily prescribed by the Law, but, after, taken away by the Gospel, so that to doubt of them was consequently to condemn the Gospell, and deny the faith in Christ. But the doubting of Usury is no establishing of the Ceremoniall Law, or overthrowing of our belief and faith in the Gospell. Neither is all doubting meant but such onely as overcometh Faith, for there is no faith but it is mingled with some doubting. Lastly it is not neces-

necessary that faith should be alwaies grounded upon the Word of God, for if a man be perswaded of any thing by the light of *Reason*, or by *Sense*, he is justly said to beleeve it. To the confirmation of this doctrine I must produce some places of *judicious Hooker*. *The will of God* (saith he) *by which we are to judge our actions, no sound divine in the world ever denied to be in part made manifest, even by the light of Nature, and not by Scripture alone*, pag: 97. And he adds in another place, *that there may be a certain belief grounded upon other assurance than Scripture* —— *we are said to believe whatsoever we are certainly perswaded of, whether it be by reason or sense*, pag: 60. And in a third he gives this reason; *It is not required, nor can be exacted at our hands, that wee*

should

should yield unto any thing other assent than such as doth answer the evidence which is to be had of that we assent unto: for which cause even in matters divine concerning some things we may lawfully doubt; of some things we may very well retain an opinion that they are probable, and not unlikely to be true. Then are our Consciences best resolved and in most agreable sort unto God and Nature setled, when they are so far perswaded, as those grounds of perswasion which are to be had will bear, which thing I so much the rather set down, for that I see how a number of Soules are for want of right information in this point oftentimes grievously vexed, when bare and unbridled conclusions are put into their minds: they finding not themselves to have thereof any great certainty Imagin this proceedeth only from lack of faith

faith, and that the Spirit of God doth not work in them, as it doth in true beleevers: by this meanes their hearts are much troubled, they fall into anguish and perplexity; whereas the truth is that how bold and confident soever we may bee in wordes when it commeth to the point of tryall, such as the evidence is, which the truth hath either in it self or through proof, such is the hearts assent thereto, neither can it bee stronger being grounded as it should bee: pag.73 74. Thus far Mr. *Hooker.* Therefore it is no argument to conclude that becaufe the *Scripture* doth not allow *Vsury*, therefore it may not be uſed: for if the *Scripture* do not abſolutely condemne it, it is ſufficient if *reaſon* or *Senſe* do guide our belief for the practice of it.

I leave thoſe that doubt to

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consider what Dr. *Fenton* himself saith within a few lines in the same page. *pag:75. This Usury which we have in hand is no principle of faith, no mystery of Salvation to be apprehended in the simplicity of belief: but a point of Morality belonging to the second table, and so determinable by the rules of Equity and Charity.*

It is objected (*pag. 77*) that *it is scandalous, and therefore unlawfull.*

Ans. If scandall be taken and not given, it is not in it self unlawfull. Still he flies from the question.

Of the unnaturalness of Usury

A fourth Reason of Dr. *Fenton* is, *p. 91.* that the encrease *of mony is unnatural. Therefore unlawfull.*

Ans. This is no argument of Divinity from Scripture, but of Philosophy from *Aristotle.*

Secondly, if it were of force, it serves onely against *Usury* of money, but not of all other things.

Thirdly, it is confessed, that money considered as it is a *metal*, is not perhaps by nature apt to generation and increase; and yet even that may bee doubted of: But money considered as it is money, which Art not Nature hath produced, may be allowed an artificial increase or gain, as well as houses, ships, and many other things not natural. Policy hath ordained the value of Metals to bee the common rule and measure for the worth of all things vendible, and by common estimation it is accompted

compted in the place and ſtead of ſuch things; ſo that in opinion and uſe mony is both land, houſe, horſe, corn, or any thing that is valued by it; even man himſelf, who in worth exceeds all other creatures, is by Gods own valuation prized at a certain ſum of money, and fifty Shekels of Silver vvere accepted by God in the place and ſtead of a man who by vow belonged unto him. *Leviticus* 27.3.

It being then ſo apparent, that Money is by Art taken, and uſed for all things valuable, both by man and God himſelf (vvho had his peculiar Coin, the Shekel of the Sanctuary, for all ſacred uſes, *Exodus* 30.13.) It follows in all reaſon, that ſince the nature of moſt things that are valued and ſold

is to bring forth an increase, that money it self also which is esteemed for them should doe the like, or else Art is frustrated of her intention, who found out the use of money onely for the ease and benefit of Trade, which proves to be a discommodity if the benefit of increase be lost by the conversion into money.

It is further objected by Dr. *Fenton*, *That money may not be let for hire, as a horse, a house, or a cow, because these things are the worse for letting.*

Answ. What thinks he, may a man take hire for a house when he binds the *Lessee* to leave it in as good repair as hee found it? Many times a horse by a moderate journey after long rest is the better, whether may the *Letter* take money for his hire?

If

If this Argument were ſound, that no hire ought to be taken, but where the things are the worſe for uſing, then I believe all the Rent that hath been paid for land ſince *Noahs* Flood hath been unjuſtly taken: For it will hardly appear that any Acre of land is worſe now than in his dayes; ſince many Acres are bettered by tillage and manuring, which by lying waſte are hurt; and houſes alſo decay moſt for want of inhabiting. The true rule of Letting is not onely the Lenders loſs in the impairing of the thing lent, but the Borrowers gain by the uſe of it. And we muſt conſider, as well what the owner is the worſe by the want of that uſe, as what the thing lent is impaired. If another uſe my land, though it be not the worſe, yet

he is the better by having the crop of it, and I am the worse by vvanting that benefit of it which hee made ; therefore I justly challenge Rent for it. The like case is for money, the Borrower hath the use of it, and though the money bee not the worse for using, yet the Lender is the worse by missing the commodity which the other makes of it, and the Borrower is bettered by the employment of it.

Also it is objected (*pag.* 148.) *That money is voyd of all immediate use in it self to the possessor while hee doth enjoy it.*

Answ. So it is with Land, which immediately neither clothes nor feeds any man, but by the mediation of tillage and pasturage both are effected, and though no man

man immediately eats or wears money, yet by the meanes of it food and raiment are procured.

Another objection is, *That money the more it doth increase the more it may, which is unnaturall, and contrary to other encrease.*

Answ. It is so in other sorts of increase; for one Sheep brings forth a Lamb, and that Sheep and Lamb in time bring forth a double increase, which multiplies to a third, and so forward: so one hundred pound brings forth ten pound, and both together in time increase to produce eleven pound. The only difference is, that money is more durable than other fruitfull things, which by course of Nature are more perishable.

Of the ungodlineſs of Vſury.

It is ungodly and impious, againſt the firſt Table, becauſe it dependeth not upon Gods Providence, but is aſſured by Bonds againſt the Act of God.

Anſ. 1. Dr. *Fenton* forgets that he ſaid *Vſury belongs to the ſecond Table*; Why is it here made a breach of the firſt?

Secondly, the *Vſurers* ſecurity is to arm himſelf againſt the *ordinary fraudes, negligencies,* or other follies of the borrower. If by the hand of God an extraordinary loſs do happen, by the like means alſo an extraordinary gaine may be raiſed ſometimes, both which belong to the borrower, except the mercy of the lender, to whom he is to truſt, relieve him.

And

And ſurely the *Vſurer* hath greater cauſe, and ſeems alſo to truſt God more than any other man, and is leaſt armed againſt him. He had need pray againſt foulweather, tempeſt, wind, and wrack; for although hee be no Husbandman, Merchant, Tradeſman, nor Labourer, yet by the thriving of all theſe he muſt live, if all or any of theſe miſcarry, it is not his bonds many times which help him. Neither againſt the hand of God onely is he unarmed, but againſt the fraudes of men many times his ſecurity cannot defend him. How many have been defrauded of their principall debts by fraudulent deeds of gift, by concealing of goods, and divers other waies? It is true ſome few in a City may ſometimes attain to a noted wealth by Uſury; but theſe are

but as ciphers in comparison of hundreds, who living by the like employment of money, do scarce attain to a moderate gain whereby to maintain themselves in their first condition; and many times as skilfull Usurers as the best, what by the loss sometimes of interest, sometimes of principal, and other whiles of both, and many times by the lying still of their mony for want of reasonable security, have proved in the end perfect Beggers by this trade. And what greater argument can there be of the hazard and danger of mony that is lent, than the common opinion of the world, which esteems a small revenew in land of Fee simple, more safe and certain than almost a double encrease in mony with perpetual hazard? and for this cause land is dearer than money.

As

As for taking of Bonds for payment, it is no more injurious to the Providence of God than to have a bond or covenant of a Tenant for the payment of his rent; for although ſome yeares by the unſeaſonablneſs of the year, or by ſome other act of God, the land yeelds not the rent contracted for, yet the Tenant is abſolutely bound to pay it without any condition of gaining ſo much by the land: And the reaſon is grounded upon great equity, and is all one both for contracts of land and money to be *abſolute*.

Neither GOD nor Nature have proportioned the valuation of Lands Commodities, or Moneys; no Text can be brought to prove an Acre muſt be ſold at ſuch a price, or a commodity at ſuch a rate, the worth of

things

things in proportion one to another, is a *humane arbitrary custom*, grounded upon the several necessities or opinions of each particular Nation. Thus the common estimation doth allow Lands, Goods, and Money taken with all casualties, hazards and charges, to be worth one year with another about a certain value; and it is reasonable that such a certain value should be contracted for: so that as the Seller or Letter is not to participate of the extraordinary gaines that may bee raised, so hee is not to sustain the losses if any doe happen.

Of the Injustice of Usury.

It is further urged, (*pag.* 98.) that

that *it is unjuſt, becauſe it takes hire for loan, and ſels Charity, which ſhould be free, ſo that things are not lent but let, if they goe for hire.*

Anſ. 1. Dr. *Fenton* can ſhew no reaſon why money may *not be let, as well as lent*; as well as a houſe or a horſe which may be both: I ought in great neceſſity to lend freely to the poor, yet this work of Charity doth not hinder me from letting the ſame thing where there is not the like neceſſity.

If the uſe of money for a time be worth mony in buying and ſelling, as Dr. F. confeſſeth (*pag.* 99.) The rule may better hold in Letting, which is no work of Charity, though both in Letting and Selling Charity is to guide us. It doth not follow that becauſe I muſt lend a ſhilling for a day, there-

therfore I may not lend a pound for a year. Besides, *even in letting for hire*, there is often both *Charity* and *friendship* shewed: As, if I let a thing for half the value the use of it is worth to one whom others dare not trust with their goods. If some things which are spent in the first use may be sold for increase, why may not other things that are used be let in the same sort since *letting* is but a *temporary* kind of selling, and selling in effect a perpetuall kind of letting. If such things as are bought this day for ten pound may be sold to morrow for eleven pound, may not the same ten pound which by buying and selling may encrease in one day to thus eleven pound, may it not by letting encrease in a whole year to as much?

Nor

Nor can there be any reaſon ſhewed, ſince mony hath a gainfull uſe in it ſelf (and as *Solomon* ſaith, *anſwereth all things*) why I may not as well let a hundred pound in mony, as a hundred-pounds worth of Cattell, houſes or lands, which I buy with my mony: And becauſe they often tell us *that he that beares the hazard muſt have the gain*, I muſt aſk what they will ſay to a leaſe for life wherin both parties hazard, yet but one gaines.

Dr. *Andrews Biſhop of Wincheſter* hath an argument againſt *Vſury* taken from the Rule of our *Saviour*, *Luke* 6.31. *as ye would that men ſhould do to you, do yee alſo to them likewiſe. Nemo* (ſaith he) *ſibi vellet Vſuras infligi, cum fratre ſic agat igitur.* No man is willing to have *Vſury* taken of him,

him, therefore he must not take himself; every man desires to borrow *freely*, therefore he must lend freely.

Ans. The Rule of our *Saviour* must necessarily be thus expounded, *Whatsoever ye will*, that is, *Whatsoever you will according to right reason or common Justice*; for if any man be so unreasonable or so frantick as to will that others should kill him, yet my Lord of *Winchester* will not say that therefore that man may kill another. So he that desires to borrow freely, breaks the Rule of common equity and rectified reason, by coveting his neighbours goods; for he that desireth to benefit himself by the use of another mans goods, doth therein uncharitably desire the hinderance of his neighbour.

Also

Alſo it is objected, that the *greatneſs of gain which is made by Vſury is unlawfull. pag.* 100

Anſ: 1. This is no proof againſt all increaſe of mony; but onely againſt exceſſive gaines: whereas it ſhould bee proved that *Vſury* of a penny in the hundred is a ſinne, as well as of ten pounds.

Secondly, By this Rule all gain of merchandiſing is condemned, which is ordinarily far greater than that of tenne in the hundred.

Thirdly, The greatneſs of gain by Lending muſt be eſtimated by the common opinion of the Country; otherwiſe how can any mans Conſcience warrant him to purchaſe any inheritance? Men buy land to them and to their heires for ever, that is till Doomesday; which

When

when it will come no man knowes, and yet as if every purchaſer knew the hour, he bargaineth for land at fifteen or ſixteen yeares purchace. But the laſt day may come within a year, or within fifteen, or perhaps not within fifteen hundred yeares: howſoever it bee uncertain, yet the publique valuation doth eſteem it Certain; And no man buyes land at 15. yeares purchace, upon Condition that Doomes-day come not before, becauſe perhaps then he may have a dear pennyworth: Nor upon Condition that if the world laſt longer then fifteen yeares that thenceforward the purchaſer ſhould pay a further ſum. No, but Cuſtome thinks fit to make an abſolute bargain, though by the meer act of God it may bee made a dear purchace. As

As the argument of the greatneſs of *gain in Vſury* makes againſt trading or merchandiſing, ſo thereby alſo bargaining for leaſes for term of yeares will be made unjuſt; And this may the better appear if we examine one of Dr. *Fentons* examples of *Vſury* in this kind: *If* ſaith he (*pag* 21.) *purpoſely to avoid the Statute I will purchaſe an annuity of twenty pound* per annum *with an hundred pound for ten yeares, this is bargain and ſale, yet the very ſame with Vſury, differing onely in parchment, and manner of Covenanting, ſubject to the ſame iniquity and inequality; poiſoned with purpoſe of avoiding the Statute and penalty of Vſury.*

Anſ. 1. If onely the purpoſe to avoid the Statute makes his Caſe to bee *Vſury*, then before the Statute

tute it was no *Usury*, for there could bee no purpose to avoid a penalty that was not, and this is to make *Usury* a breach only of Mans Law and not of Gods. Let us ask Dr. *Fenton* whether a lease for yeares and annuity bought with mony bee *Usury* simply in it self; he dares not say it, his answer is, *pag:* 129 *We cannot condem it for Usury*, and yet he seeth most apparently it is of the very self same nature with *Lending* upon bonds, and differs onely in the security: upon bond a man ties himself, upon a lease a man ties his land, in both these there is the like increase by mony, and both pay alike at the end.

Secondly, this Case I find put of a lease that brings in above tenne in the hundred, there-

thereby to make it more odious: but give us leave to put it in other termes, and then aſk his opinion, If with a hundred pound I purchaſe an anuity of tenne pounds *per annum* and twenty ſhillings over yearly for tenne yeares, Is this *Uſury* becauſe it is an increaſe above the principall? It is the very ſelf-ſame bargain in nature with his, it differs only in the quantity of the increaſe. Now both by his definition and argument, as well the increaſe of a penny is Uſury as of tenne pounds in the hundred, ſo then by his doctrine a man may not buy a leaſe worth one penny more than his principall. If it bee pretended that bargain and ſale of leaſes be lawfull if it be reaſonable, otherwiſe not; then if the unreaſonableneſs onely of

of the bargain make it a sinne of *Vsury*, then the former doctrine which saith *all increase is Vsury, is thereby denied*, And I confess that an unreasonable bargain is a sinne, but of theft in generall not of *Vsury*.

Thirdly, The principall purpose in buying an *annuity* or lease for yeares is to gain by a hundred pound, which since it could not safely bee done by bonds, therefore by a second intention men labour to avoid the Statute, so that to gain and in gaining to avoid the Statute is the purpose of such Contracts, and not chiefly to avoid the Statute, which might best be avoided by not purchasing at all.

Fourthly, It is no sinne to avoid a statute by lawfull meanes; if the Contract of bargain and sale

ſale bee in it ſelf lawfull, why ſhould it be a vice and not a vertue thereby to avoid the penalty of the Law, ſince lawes are purpoſely made to force men to avoid them by lawfull meanes.

Fiftly, Whereas Dr. *Fenton* (*pag.* 129.) concludeth, that if *ſimply without any pretence ſuch annuity of rent bee bought or ſold, wee cannot condemn it for Vſury.* It followes that the pretence or intention of the heart, and not the Contract makes it *Vſury*: and that (as he himſelf confeſſeth *pag.* 128) *if the intention be right, that which formally is Vſurious, upon the matter may in juſtice bee equivalent to a lawfull Contract.* If formall *Vſury* may bee no *Vſury*, wee muſt look for a new definition of *Vſury* in the Conſciences of men, and not

in

in Dr. *Fentons* treatise; And if *Usury* bee committed in Buying and Selling, what Contract will bee found in the world without *Usury*?

To Instance in some other Contracts, let us consider of the absolute buying aud selling of land, or of purchasing an annuity for life; because these two Contracts are esteemed by most men to be the lawfullest of all others, yet in both these, the just and ordinary valuation both of fee simple land and of leases for lives is grounded and guided by *Usury* onely, and as the use of money goeth higher or lower, so the prices of these rise and fall, so that in very truth he that purchaseth land is the greatest *Usurer* in the world. because he maketh the greatest and certainest gain by his

his bargain, for example; Admit land is bought and ſold for ſixteen yeares purchaſe, and let the inheritance of the land bee made away for ſo little a ſumme as the land will bring home in ſixteen yeares; what Conſcience is there to keep that for ever, which in ſo ſhort a time payeth the purchaſer his principal? There can be no other reaſon yielded for this great diſproportion but this, that both the Purchaſer and Seller do equally value the uſe of the money, and do make the bargain accordingly. The purchaſemony conſidered with the Uſe of it would laſt about a thouſand yeares in paying yearely ſo much as the Rent of the land is, therefore the Purchaſer expects to enjoy, and the Seller intends to part with the land for

ever, becauſe the inheritance of the land after a thouſand yeares is not valuable, for that ordinarily within four or five hundred yeares the poſſeſſions of the antienteſt families come to a period, or decay. In like manner, an annuity for life is bought for nine yeares purchaſe, not becauſe a mans life is ordinarily taken to laſt but nine yeares, but becauſe the mony with the uſe will laſt almoſt twice nine yeares in paying the annuity: ſo that if the Purchaſer of the annuity dye within eighteen yeares, the Grantor may be a gainer, or at the leaſt a ſaver, by the bargain; but if he live above eighteen yeares the Grantor muſt be at loſs. This Caſuality of a leaſe for life, wherein the Buyer hopes by his own life to be a gainer, and the Seller hopes

hopes by the death of the Buyer to bee a gainer, hath made ſome men (if wee will believe *Thomas Aquinas*) to think that a leaſe for life is the worſt kind or double *Vſury*, becauſe there is an *Vſurious* intention on both ſides, as well in the Grantor as in the Grantee to gain.

If many men who are fit for Callings live idlely on Uſury, they ſinne, but no otherwiſe than thoſe that let their lands: they may and ought to ſerve God and their Country in ſome Calling, if they do not, it is no fault of *Vſury*, but an abuſe of it. Neither let any man fear that *Vſury* will bring idleneſs in the world, for if all men be idle there can be no *Vſury*. It is the uſury-imployment of men by their trading that makes the uſe of money to be at ſo high a

value, and many muſt bee idle if they borrow not a ſtock to ſet them on work.

Of the Uncharitableneſs of Uſury

In the laſt Chapter of Dr. *Fenton* his ſecond book, I did expect ſome extraordinary argument againſt *Uſury*, becauſe it treats of the breach of *Charity* by *Uſury*, and the oppoſition between them: I did long to ſee it proved; but now I am come to it, I find it the ſhorteſt Chapter in his book, both in quantity, and proof, the little that he ſaith is in effect, *that Uſurers are commonly uncharitable. pag.* 106.

Anſw. I did expect to have it proved that all *Uſury* is in it ſelf uncharitable, and he tells us that all *Uſurers* are ſo: It is the faul

fault of the men, and not of the thing. Thrift which of it ſelf is a vertue, being abuſed is the hinderance of Charity, and yet Thrift is no breach of Charity: A thrifty man and an *Vſurer* may bee mercifull to the poor, becauſe they are many times better able than others. If *Vſury* of it ſelf were a breach of Charity: then not to lend to *Vſury* were an act of Charity; which is but a meer Privation and no Act at all. The reaſon why *Vſurers* bee commonly found mercileſs, is for that in many men Covetouſneſs makes them *Vſurers*, and not *Vſury* brings them to be Covetous. Many *Vſurers* are found well-diſpoſed to Charity, and give twice as much to *Charitable* uſes as thoſe that have twice their eſtate in Lands and are no

Usurers. Since then all *Usurers* are not uncharitable, and those that be, are found, and not made such by *Usury*, it is but small Charity to say that *Usury* of it self is the breach of Charity.

FINIS.